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In the Madras High Court

Case No : C.A. No. 179 of 1984

Amaravathy Fertilizer Company — APPELLANT

Vs

State by the Agricultural Officer (Quality Control) Office of the Assistant Director of Agriculture (Training and Visit) Karur — RESPONDENT

Date of Decision : 23-09-1988

Acts Referred:
Essential Commodities Act, 1955 — Section 7(1)(a)(ii)

Citation : (1988) LW(Cri) 444

Hon'ble Judges : Arunachalam, J

Bench : Single Bench

Advocate : Natarajan for R. Thangavel, for the Appellant; Kalaiselvi for Public Prosecutor, for the Respondent

Judgement

Arunachalam, J.—The first and second accused in S.T.C. (E.C) No. 15/1983 on the file of the Sessions Judge and Presiding Officer for

Essential Commodities Act Cases, Pudukkottai are the appellants. First accused is the company, while the second accused is the managing partner

of the said Company. They along with A3 to A5 were prosecuted by the respondent for contravening the provisions of Clause 13(1) (aa) of the

Fertilizer Control Order 1957 read with S.7(1) (a) (ii) of the Essential Commodities Act 1955. The trial court acquitted A3 to A5, but found Al

and A2 guilty of the charge Al being the Company a sentence of fine of Rs. 2,000 was imposed. A2 was sentenced to suffer rigorous

imprisonment for six months and to pay a fine of Rs. 2.000 in default to undergo rigorous imprisonment for three months.

2. The facts which led to the prosecution can be summarised as follows: The first accused Amaravathy Fertilizer Company represented by its

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managing partner A2 is manufacturing Elephant Brand Fertilizer with a proper certificate of registration issued by the Director of Agriculture,

Madras. A3 to A5 are the partners of the above company. In terms of the certificate of registration, the company should manufacture and sell

fertilizer in accordance with the provisions of the Fertilizer Control Order 1957. The respondent who has been examined as P.W.1 inspected

Amaravathy Fertilizer Company at 3-00 P.M. on 21-10-1982 and took samples of the fertilizer known as standard mixture No. 18 which had

been manufactured on that day and duly entered at page 75 of the standard mixture stock book. The sample was taken for analysis to find out

plant nutrients contained therein. It is the case of P.W.1 that the sample was taken as per quartering method, divided into three portions and

sealed. All formalities enjoined by law were observed and one portion was sent to the laboratory at Tiruchirapalli for analysis on 23-10-1982. The

result of the analysis was recehed on 9-2-1983 from the Assistant Agricultural Chemist, Coimbatore mentioning that the sample did not conform to

the prescribed standard and, as such, the seizure was a non-standard fertilizer. The report of the Chemical analyst has been marked as Ex.P5.

3. To substantiate the prosecution case, the respondent apart from examining himself as P.W.1, examined P. Ws.2 and 3 who are Assistant

Agricultural Chemist and his subordinate who analysed the sample respectively. The prosecution also marked Ex.P1 to P13, The defence

examined one witness who is an Office boy in the first accused company, but did not choose to file any documents. M.O.1 the sample of fertilizer

given to the accused by the complainant, was produced in court by the accused and marked by the respondent while he was cross examined.

4. The trial court accepted the prosecution case in respect of the appellants alone and convicted and sentenced them as stated earlier in the

judgment. The aggrieved accused have preferred this appeal challenging their conviction and sentence imposed by the trial court.

5. Learned Counsel for the appellants, Mr. Natarajan raised the following contentions:

(i) In view of the amendment introduced by Act IS/1981 to the Essential Commodities Act which is self contained code in it will cogmazanee of

offences under the Act could be taken with out commitment only on a report tiled by the Police and not by any other public servant and that,

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therefore, the complaint was not maintainable.

(2) The sampling in this case had not been done in accordance with the provisions contained in Schedule II of the Fertilizer (Control.) Order,

which are mandatory in nature.

(3) The sample taken had not been sealed with the seal of the manufacturer which is obligatory under paragraph 4(iii) of Schedule II of the

Fertilizer (Control.) Order. As a corollary to this submission, it is argued that for the first time P.W.1 has deposed in court that A2 was not willing

to affix his seal though this alleged unwillingness does not form part of any contemporaneous record. According to the learned Counsel, this

safeguard provided under the Act has been violated which would go to the root of the matter, entitling the appellants to an acquittal.

(4) Though the sample had been sent to the analyst at Trichy. the report had been received from from the laboratory at Coimbatore and there is no

conflating evidence to show that the very same sample which was originally sent to Trichy was later desparated to Coimbatore by the competent

authority. This aspect would vitiate the prosecution.

6. The first contention of the learned Counsel about the non-maintainability of the complaint in view of its not having gone through the gauntlet of a

committal which would be the sine quo non for taking cognizance of the offence, has to be considered first. The learned Counsel in support of his

contention placed reliance on G. Mounaguruswamy M. Mylsami v. Agricultural Officer (Inputs) Erode 1985 L.W. (Cri.) 206. In that case Kader,

J., while rejecting the contention that only on a report filed by the police and not by any other public servant, the Special Court can take

cognizance of offence under the Act, held that the Special Court was not competent to take cognizance of the complaint filed by the private

complainant as a court of original jurisdiction, since the Special Court was deemed to be a Court of sessions constituted under the Act and

necessarily committal had to be made contradistinguished with the power it had to take cognizance without committal, on a police report.

Therefore, in that case, the trial court was directed to return the complaint to the respondent for presentation to the concerned Magistrate for being

proceeded with according to law. It will be now necessary and useful to refer to the relevant provisions of the Essential Commodities

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(Amendment) Act 18 of 1981. S.12(AA)(1)(c) of Act 18 of 1981 lays down thus:

A special Court may, upon perusal of police report of the facts constituting the offence under this Act, take cognizance of that offence without the

accused being committed to it for trial.

This amending Act had not touched S.11 of the parent Act regarding cognizance of offences. S.11 runs thus:

No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by

a person who is a public servant as defined in S.21 of the Indian Penal Code (45/1860)

It is therefore obvious that in view of the continuance of S.11 on the statute book which had not in any way been impaired or repealed by

S.12(AA) of the Amending Act, the special court will be entitled to take cognizance of an offence upon a complaint preferred by a public servant

even after the enforcement of Cl.(e) to sub-S.(l) of S.12 (AA). It cannot be contended that cognizance can only be taken upon a police report and

not by any other method of taking cognizance provided by the Criminal Procedure Code. This view has been upheld by KaderJ. in the decision

referred to earlier.

7. What has got to be considered now will be the need for a commitment to the special court, on a complaint filed by a public servant other than a

police officer, as has been done in this case. The report under S.11 could include a police report as well and all that S.12(AA)(1)(e) states is that

the special court may take cognizance on a police report without the accused being committed to it for trial. These words appear to have been

used to obviate the possibility of any doubt, and to avoid interpretation of S.11 as excluding a police report since the section does not mention

specifically a police report. The special court is a court of original criminal jurisdiction and no question of any committal to it arises under the Act.

8. Under S.12(AA)(1)(f) the Special Court is enjoined to try in a summary way the offences under the Act. The Special court under the Act is not

to be hide-bound by the terminological status, description of either a magistrate or a court of sessions. It must exercise all powers that a court of

original criminal jurisdiction enjoys and undoubtedly the power to take cognizance of an offence is one of them. The power to try a case would

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necessarily include the power to take cognizance. The special court under the Act cannot be barred from taking cognizance by the well known and

accepted mode of complaint of facts constituting the offence, if the requirement of S.11 is satisfied.

9. It will be now relevant to refer to the pronouncement of the Supreme Court in A.R. Antulay Vs. Ramdas Sriniwas Nayak and Another, , which

had not been brought to the notice of Kader J. when he rendered the decision reported in G. Mounaguruswamy M. Mylsami v. Agricultural

Officer (Inputs) 1985 L.W. (Cri.) 206. The Supreme Court, in the context of a somewhat similar provision of S.8(1) of the Criminal Low

Amendment Act, wherein it was argued that the court of Special Judge would be barred from taking cognizance of an offence committed by a

public servant, on a private complaint rejected such an argument observing that the alternative modes of taking cognizance apart from that on a

police report were not barred. The Supreme Court has observed as follows:

If the language employed in S.8(1) is read in this light and in this background, that a special Judge may take cognizance of offence without the

accused being committed to him for trial, it necessarily implies that the court of special judge is armed with power to take cognizance of offences

but that it is denied the power to take cognizance on commitment by magistrate. This excludes the mode of taking cognizance under S.193 Cr.P.C.

Then remains only S.190 Cr.P.C. which provides various methods of taking cognizance of an offence by Court.....Legislature provided for

both the positive and the negative. It positively conferred power on special judge to take cognizance of offences and it negatively removed any

concept of commitment.

In view of the authoritative enunciation by the Supreme Court by way of analogy which equally covers the present situation I am unable to agree

with the contention of the learned Counsel for the appellants that the special court will not be empowered to take cognizance on a complaint made

by the respondent without an order of committal. The complaint as laid is maintainable. The first contention has thus to be rejected.

10. The second contention urged by Mr. Natarajan relates to the mode of sampling prescribed under Schedule-II to the Fertilizer (Control) Order

1957. The relevant paragraph in Schedule-II reads as follows:

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Paragraph 2(b) of Schedule 11: ""Preparation of composite Samples:

(i) Draw, with an appropriate sampling instrument, small portions of the material from different parts of each container in the gross sample. The

portions so obtained from the containers shall he be thoroughly and made into a composite sample.

(ii) If the containers do not permit the use of sampling instrument empty the contents of the containers on a level, clean, hard surface and draw a

composite sample by the process of quartering as described under 2(b) (iii) below,

(iii) If the composite sample is much larger than about 4 lb kg in weight its size shall be reduced by the method of quartering. Spread the composite

sample on a level clean, hard surface, flatten it out and divide it into four equal parts. Remove any diagonally opposite parts. Mix the two remaining

part together to form a coae, flattern out the coae and repeat the operation of quartering till a composite sample of about 4 lb (2 kg) in weight is

obtained.

The sustained of Mr. Natarajan on the evidence on offence that P.W.1 which taken will with indicate diagonally opposite and not directly opposite

parts, contended by the learned Counsel for the appellants. I find that when P.W.1 had explained in detail the procedure followed by him, the

word "" "" is quite possible to take within its fold a diagonally opposite part, as rightly contended by the counsel appearing for the respondent. I am

not therefore impressed with the second contention as well.

11. The third contention is based on the preparation of the test samples formulated in paragraph 4 under Schedule II. The relevant portion runs

thus:

(a) Preparation of test samples:

(i) The composite samples obtained under para 2 or 3 above shall be spread out on a clean, hard surface and divided into three more or less equal

portions, not less than 1 lb (0.5 kg) each,. Each of those samples shall constitute the test sample.

(ii) Each test sample shall be immediately transferred to a suitable container, as described under 1 (e) and 1(f), provided with a tight fitting stopper

or lid so that the original composition of the fertilizer remains unchanged. Each container shall be properly labelled given all the particulars of the

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consignment as described under l(g).

(iii) Each test sample container shall then be sealed with seals of both the Inspecting Officer and the Manufacture or dealer or purchaser as the

case may be,

(iv) One sample so sealed shall be sent to the state Fertilizer Analyst for analysis and the second given to the manufacturer or dealer or purchaser

as the case may be. The third sample shall constitute the reference sample and shall be retained by the Inspecting Officer for production in the

Court, necessary.

According to the learned Counsel, the test sample container shall have to be sealed with the seals of both the Inspecting Officer and the

manufactured or dealer purchaser as the case may be thus is a mandatory provision and is intended as a statutory safeguard for the persons from

whom the samples are served to appreciate the submission of the learned Counsel it will be necessary to refer to the evidence of P.W.1. P.W.1

has stated that after the sample was tied with the string he affixed his seal, and asked A2 to affix the seal if any he had, to which A2 replied that he

was notwilling to affix any seal. It is not the case of P.W.1 that he informed A2 that in law he was bound to affix his seal. It is seen that soon after

the seizure, when a sample was handed over to A2, his signature had been obtained in a printed form Ex.P2, wherein some entries have been

made in ink. This contemporaneous record does not contain the fact of non-willingness of A2, to affix his seal, which is a procedural mandate.

Even in the complaint filed in Court, P.W.1 had not chosen to incorporate this refusal of A2 to affix his seal to the sample which obviously is a

statutory safeguard It may be that the evidence of P.W.1 on this aspect is probable, but when the accused had examined D.W.1 to show that he

was not present at the time of sampling and had further taken a definite stand that he was not asked to affix his seal and the sample was also not

given to the company, there must be some material on record to lend assurance to the version of P.W.1 for the non affixing of the seal of the

manufacturer. This would be possible only by the entries in the contemporaneous record or subsequent statement of this fact in the complaint or in

the records maintained in the process of finalising the prosecution. How ever, no such record is forthcoming. This aspect, in my view, goes to the

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root of the matter and the manner of sampling is thus open to doubt. I am unable to place reliance only on the evidence of P.W.1 which is belated,

to safely record a conviction.

12. The last contention also appears to have force. P.W.1 has stated in his evidence that the sample taken by him was sent for analysis to the

laboratory at Trichy. Along with the sample he had sent a covering letter and a form containing details of the sampling. The report is obviously

given from the laboratory at Coimbatore and the explanation offered is that some times if the Trichy Laboratory was over burdened samples used

to be sent to the Coimbatore Laboratory, from where the reports would be received. It is admitted that the sample was sent to Trichy for analysis

in this case through a messenger whose name would be found in the concerned register. This messenger has not been examined to show that the

Trichy Laboratory was over-burdened necessitating the sample to be forwarded to the Coimbatore Laboratory. I find that the duty to send

samples for analysis is cast on the authorities who lake the samples and no provision has been brought to my notice which permits one laboratory

to suo motu send the sample to another laboratory for analysis without the intervention of the seizing authority. It is also seen from the evidence of

P.W.1 that even on the next day to this sampling, he tooK further samples in the premises of A1 and sent those samples also for analysis. It is

admitted that the report of those samples were also received, but he is unable to state the laboratory from which that report had originated.

13. P. Ws.2 and 3 have been examined to speak about the analysis of the sample at Coimbatore, the sample having been received at the

Coimbatore Laboratory from the Laboratory at Trichy. There is no record produced to prove the transfer of the sample from Trichy laboratory to

the Coimbatore Laboratory. It is admitted that the sample can be sent to Coimbatore laboratory only after their consent. There is no evidence even

for that course having been followed. P.W.2 would stare that as soon as the sample was received in the laboratory, the seal was broken and the

person who did that act had not been examined in this case. PW 3 who analysed the sample admits that he saw the sample for the first time on 17-

1-1983 when it was brought from the store room. The procedure followed by them in the laboratory on receipt of the sample was to give a Lab.

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Number and paste it to the bottle which will be then kept in the store room. The bottle so kept in the store room will not be sealed. There is no

proof in this case from the concerned person who handled the sample to indicate that the sample received from Trichy relatable to this case, was

the one analysed by PW 3. The mere stating of Code No. KRR. 60 of 82-83 will have, on the facts of this case, no significance whatsoever. This

aspect also casts a considerable doubt in the case projected by the prosecution. In this context one cannot overlook the evidence of P.W.1 that

Ex.P1 produced by the accused at the time of seizure contained the correct proportions in which fertilisers were sought to be mixed on that day.

On a totality of the evidence in this case, I am of the view that the prosecution had not proved the case against the accused beyond reasonable

doubt and therefore they would be entitled to an acquittal. The convictions and sentences imposed by the trial Court are set aside and the

appellants are acquitted. The fine amounts if any paid by them, shall be refunded.

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