(1984) 03 AHC CK 0006

In the Allahabad High Court

Case No : Criminal Revision No. 1655 of 1981

Ashok Kumar and Others — APPELLANT

Vs

State of U.P. — RESPONDENT

Date of Decision : 07-03-1984

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 6, 6A, 6C, 7
Uttar Pradesh Coal Control Act, 1977 — Section 12, 4

Citation : (1982) 8 ACR 233

Hon'ble Judges : N.N. Sharma, J

Bench : Single Bench

Advocate : Pradeep Kumar, for the Appellant; H.P. Tripathi, AGA, for the Respondent

Judgement

N.N. Sharma, J.—This revision is directed against the order dated 21-9-1981 recorded by Sri N.P. Verma, learned VII Addl. Sessions Judge, Ghaziabad in Criminal Appeal No. 32 of 1981 u/s 6C of Essential Commodities Act dismissing the same and confirming the order of Sri Rajendra Kumar, Addl. District Magistrate (E), Ghaziabad in proceedings u/s 6A of the Essential Commodities Act for forfeiture of 51 tonnes of coal.

2. It appears that on 11-9-1980 at about 1.40 P.M. Supply Inspector alongwith his staff checked the godown of Ashok Kumar which functioned under the style ''Singh Roadlines Company, U.P. Delhi Border''. Ashok Kumar was present at the time of raid when 51 tonnes of coal were found stored in the godown for which no permit or licence could be produced by the proprietor or manager of the said Transport Company and so he was sent up u/s 3/7, Essential Commodities Act for violation of Section 4/12 of U.P. Coal Control Order, 1977 which has been made punishable under the aforesaid provisions of Essential Commodities Act. A case on crime No. 423 under this Act was also registered at police station Ghaziabad in connection with this recovery.

3. Meanwhile learned Addl. District Magistrate (E), Ghaziabad issued a notice to

revisionist No. 1 and in reply to this notice alongwith partners of the alleged firm to show cause against confiscation and forfeiture of the said coal as provided by Section 6A of Essential Commodities Act No. 10/55 as amended uptodate.

4. Reply put forward by the revisionists was that the Transport Company was simply a transporter and the disputed coal was purchased from M/s. Eastern Coal Limited Neemcha, West Bengal, M/s. Gupta Fuel and Coal Depot Jammu and M/s. Ramesh Kumar BKO Meelanpur Ludhiana; some coal was also purchased from M/s. Wali Hard Coke Corporation Neersa Dhanbad and M/s. Subbamal Ramditta Mal Coal Depot, Malod Punjab. This coal purchased from Neemcha and Dhanbad was to be transhipped to Jammu and Malanpur and Malok.

5. The coal was kept in godown during transit. It was not meant for use within U.P.

6. After the said reply a notice was issued by learned Addl. District Magistrate (E), Ghaziabad to Eastern Coal Ltd. Neemcha West Bengal, M/s. Gupta Fuel and Coal Depot Jammu and M/s. Ramesh Kumar BKO Malanpur Ludhiana & M/s. Wali Hard Coke Corporation Neersa Dhanbad and Subbamal Ramditta Mal Coal Depot Malod Punjab. M/s. Gupta Fuel and Coal Depot holder in his reply said that he carried on coal business in Jammu and no licence was needed for it there. He purchased coal from Assam, West Bengal etc. and could carry it to Jammu as there was no restriction in Jammu. He had purchased the two trucks of slap coal and handed it over to Singh Roadlines, U.P. for carrying it to Jammu.

7. M/s. Subbamal Ramdittamal in his objection said that he carried the coal business and had a licence for it. He purchased coal from Assam, West Bengal and different parts of India and there was no restriction for it at the places purchased; he had purchased one truck of hard coal from M/s. Hard Coke Corporation of India Neersa Dhanbad and entrusted it to M/s. Singh Roadlines for carrying it to Malod district Faridkot. M/s. Ramesh Kumar BKO in his reply to the notice said that he was running brick kilns and slap coal, lump coal and haarsi coal were used there and he had a licence for it. He purchased the coal from Assam, West Bengal and there was no restriction for this purchase. He had purchased one truck steam and slap coal from M/s. Eastern Coal Ltd. Neemcha and had given it to Singh Roadlines for carrying it to his brick kiln.

8. Learned Addl. District Magistrate (E) after considering all the objections came to the conclusion that the coal did not belong to them but it belonged to the owner of the Firm from where it had been recovered. So he ordered the forfeiture of the coal in favour of State by his order dated 24-2-1981.

9. During appeal the main contention relied upon on behalf of the revisionists was by filing certified copy of judgment recorded by Sri K.N. Singh, learned Chief Judicial Magistrate, Ghaziabad dated 10-8-1981 about prosecution of Ashok Kumar, revisionist u/s 3/7 of Essential Commodities Act for the recovery of the aforesaid coal. He was acquitted by learned Magistrate and it was further held that Ashok Kumar was keeping this coal for the purpose of transportation and no

offence u/s 4 of U.P. Coal Control Order, 1977 was made out against him.

10. Thus the contention put forward on behalf of the revisionists was that after the said acquittal of Ashok Kumar for offence u/s 3/7 of Essential Commodities Act read with Section 4 of U.P. Coal Control Order, 1977 the order of forfeiture as recorded by learned Addl. District Magistrate (E) should be set aside. However, this contention was over-ruled by the learned appellate court on the ground that there was no cogent evidence on record to prove the ownership by the aforesaid Firm and it should be treated as having belonged to Ashok Kumar, revisionist (now).

11. Both the proceedings viz. for prosecution u/s 3/7 of Essential Commodities Act and Section 6A of the Essential Commodities Act were separate and independent proceedings and the acquittal of Ashok Kumar could not stand in the way of this forfeiture about this transaction. In the result the appeal was dismissed.

12. I have heard Sri Pradeep Kumar, learned Counsel for the revisionists and Sri H.P. Tripathi learned Counsel for the State and have carefully gone through the evidence on record.

13. The revision is allowed on account of following reasons:

1. In order to attract the operation of Section 6A of Essential Commodities Act aforesaid it had to be established that there was commission of offence u/s 3, read with Section 4 of the said Act and Order. Unless it is found that the accused had mens rea at the time of commission of the said offence Section 6A of the aforesaid Act could not come into play as was held in Nathulal v. State of Madhya Pradesh, reported in AIR 1966 SC page 43. It appears that in that case the Appellant was a dealer in foodgrains at Dhar in Madhya Pradesh. He was prosecuted in the court of Addl. District Magistrate (E), Dhar for having in stock of 885 maunds and 2.1/4 seers of wheat for the purpose of sale without a licence and thereby committed an offence u/s 7 of Essential Commodities Act. The Appellant pleaded that he did not intentionally contravene the provisions of the said section on the ground that he stored the said food-grains after applying for a licence and was under the belief that it would be issued to him soon. Learned Addl. District Magistrate, Dhar found on evidence that the Appellant had no guilty mind and so acquitted him. The matter reached the Hon''ble Supreme Court where the judgment delivered by two Hon''ble Judges upheld the said decision and order of acquittal.

2. Thus in the teeth of acquittal of Ashok Kumar by learned Chief Judicial Magistrate Sri K.N. Singh, it cannot be held that the jurisdiction of learned Addl. District Magistrate (E) for confiscation was rightly exercised. Section 6, Sub-section (3)(c) of the said Act reads:

Where in a prosecution instituted for the contravention of the order in respect of which an order of confiscation has been made under this section the person concerned is acquitted, be paid to the owner thereof or the person from whom it is seized.

3. The matter is not resintegra. In Ishwar Bhai Ram Bhai v. Shyamlal Ghosh, reported in 1978 19, Gujrat Law Reporter at pages 228, 231 and 232 it was held that the order of confiscation passed by the Collector would be subject to the acquittal on merits of the case by the court in respect of the same contravention which is the basis of the order of confiscation. No authority to the contrary was cited before me and I respectfully agree with the observations made in the said authority on this point.

4. The acquittal of Ashok Kumar by the learned Chief Judicial Magistrate in the main case and the order of confiscation implying the contravention of Section 3 of Essential Commodities Act and Section 4 of the Coal Control Order 1977 is violative of the principles of resjudicata which was applied to criminal case also, by the Supreme Court--See Pritam Singh and Another Vs. The State of Punjab, relied upon in State of U.P. v. Prabhat Kumar Trivedi .

1966 CriLJ 740> 14. For the aforesaid reasons the revision is allowed. Impugned order is set aside; the coal in question shall be released in favour of revisionists; in the event of its sale having already taken place the revisionists are entitled to the refund of the auction sale proceeds.

