

(1979) 09 MP CK 0001

In the Madhya Pradesh High Court

Case No : Criminal Revision No. 46 of 1978

Bhanwarlal R. Vaidh

APPELLANT

Vs

State of M.P.

RESPONDENT

Date of Decision : 06-09-1979

Acts Referred:

Madhya Pradesh Foodgrains Dealers Licencing Order, 1965 — Section 2

Citation : (1980) JLJ 762

Hon'ble Judges : G.L. Oza, J

Bench : Single Bench

Advocate : V.K. Jain and D.D. Vyas, for the Appellant; B.L. Agrawal for State, for the Respondent

Final Decision : Dismissed

Judgement

G.L. Oza, J.—This revision petition has been filed by the petitioner against an order passed by Collector Mandsaur confiscating certain quantity of food-grain which was seized. The order of the Collector has been maintained on appeal by the Sessions Judge Mandsaur.

2. It appears that on 29th February 1976 the shops of businessmen at Shamgarh were inspected. At the shop of Ramlal Gangaram at about 4-30 in the evening in four theas pulled by hand some quantity of foodgrain was found. The hammals were interrogated but as they were not in a position to give satisfactory answer, the 23 bags of "tuwar" was seized. Later, on investigation it was found that this "tuwar" belongs to Bhanwarlal s/o Ram-pratap of Khejadia and it was sent by him for sale to Ramprasad s/o Ramgopal of Shamgarh. It appears that it was also found that Bhanwarlal s/o Rampratap was running a shop at the village. As he had no licence under the Madhya Pradesh Foodgrains Dealers Licencing Order, 1965 (hereinafter referred to as "the Licensing Order") a notice was issued to the petitioner and after hearing him the quantity of foodgrain was confiscated. Against this confiscation an appeal was preferred and as the learned Sessions Judge maintained the order passed by the Collector, the present revision petition

has been filed.

3. Learned counsel for the petitioner contended that there is nothing to hold that the petitioner was a dealer and in absence of that the foodgrain could not be confiscated. He also contended that according to the petitioner this foodgrain belonged to his son and nephew who had agricultural lands and the Collector committed an error in confiscating it without notice to these two persons.

4. In clause 2 (a) of the Licensing Order, 1965, the word "dealer" has been defined:

2 (a) "dealer" means a person who is engaged or intends to engage in the business of purchase, sale or storage for sale of any one foodgrain in quantity of 10 quintals or more at any one time, or in quantity of 25 quintals or more at any one time in respect of all foodgrains taken together, whether on one's own account or in partnership or in association with any other person or as a Commission Agent or Arhatiaya (excludes kachha Adata) and whether or not in conjunction with any other business; but does not include a person who--

(i) stores any foodgrains produced by him by personal cultivation; and

(ii) does not engage in the business of purchase or sale of food-grains;.....

This definition clearly shows that when a person who is engaged or intends to engage in business of purchase or sale or storage for sale of any foodgrain and the quantity is more than 10 quintals of any one commodity or more than 25 quintals of all commodities of foodgrains put together, then he has to obtain a licence and he will be deemed to be a dealer. The facts in the present case are that this quantity of foodgrain belonged to the petitioner and was sent to Shamgarh to a dealer for sale. In fact the quantity of foodgrain was recovered in Shamgarh from "haath thelas". It was therefore clear that this quantity of "tuwar" was sent by the petitioner to Shamgarh for sale. And on these facts it clearly emerges that he intended to engage in the sale of food-grain which was more than 10 quintals. Apparently, therefore, it could not be said that this quantity of foodgrain which was seized will not fall within the mischief of the definition of the word "dealer". Admittedly, there is no licence. Consequently, no grievance can be made if the foodgrains were seized and confiscated by orders of the Collector as admittedly only that much quantity has been confiscated which was in excess of the quantity permitted in the definition of "dealer".

5. It was contended by learned counsel for the petitioner that he had intimated the Collector that in fact this foodgrain was owned by his son and nephew who are agriculturists and he therefore contended before me that without notice to these persons who were real owners the goods could not be confiscated. Learned counsel for the petitioner was not ready to state that his client has nothing to do with these goods as according to him although the goods belonged to his son and nephew, but he has also interest in it as according to him the goods belong either to the joint family or partnership or jointly to all of them, and it is

apparent that his son and nephew also had share and interest in these goods and he happens to be the karta of the family and is pursuing the matter not only on his own behalf but on behalf of his son and nephew. The son or the nephew have not come before this Court and there is nothing to show that the petitioner after disclosing the fact as to who are the real owners had walked off and did not report to them and the Collector confiscated the goods without notice to them. The facts in the instant case are different from those in Chandeshwar Mahto and Others Vs. State of Bihar and Others, on which reliance was placed by learned counsel for the petitioner. It was also contended that the notice given to the petitioner was not in order. However, learned counsel could not point out what was the defect in the notice. But looking to the notice it is clear that all the facts necessary have been stated therein and a detailed reply has been filed by the petitioner which has been considered by the Collector and all these facts have also been considered on appeal by the learned Sessions Judge.

6. A grievance was made that the learned Sessions Judge in his appellate order has made an observation that it is not necessary for the Collector to come to a conclusion beyond doubt that the commodity was stored for sale. It could not be disputed that there being no criminal prosecution the contention that the Collector must hold beyond doubt is not necessary as no benefit of doubt can be given in a case of this kind where there is no penal prosecution for the present. It appears that in the light of the definition of the word "dealer" if this quantity of foodgrain was sent for sale or stored for sale, then even, it was enough to bring it within the mischief of the definition of the word "dealer". Consequently, it appears that what the learned Sessions Judge has observed is about the contention of the petitioner about the commercial concept of "dealer" apart from the definition of the word provided in this order. Apparently, so far as the definition of the word "dealer" provided in section 2 of the Licencing Order goes, carrying the foodgrain for sale or storing it for sale even once, if that crosses the limit which is provided in that definition, is sufficient to attract the definition. Consequently, I see no force in the contention advanced by learned counsel for the petitioner.

7. In the light of the discussion above, therefore, this petition is without substance and is dismissed. The order passed by the Collector Mandsaur dated 13th July 1976 is maintained.