
(1964) 07 CAL CK 0012

In the Calcutta High Court

Case No : Criminal Revision Case No. 624 of 1964

Chanai Mondal

APPELLANT

Vs

The State

RESPONDENT

Date of Decision : 03-07-1964

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 236, 237, 238, 423(1), 423(1)(a)
Essential Commodities Act, 1955 — Section 3, 7(a)(ii)

Citation : 68 CWN 1031

Hon'ble Judges : D.N. Das Gupta, J;A.C. Gupta, J

Bench : Division Bench

Advocate : A.K. Dutta and Balai Chandra Roy, for the Appellant;S.N. Banerjee, D.L.R. for the State, for the Respondent

Judgement

D.N. Das Gupta, J.—This Revisional petition is directed against the order of the Sub-divisional Magistrate, Kalna directing sale of a certain quantity of paddy seized under the provisions of the West Bengal Rice and Paddy Control Order, 1964. The petitioner's case is that on 11th May, 1964 Binoy Kumar Saha, Sub-Inspector of Food & Supplies, Samudragarh seized 250 maunds of paddy from the petitioner's house on the ground that the paddy was stocked without a producer's licence under the aforesaid Order. On 21st May, 1964 charge sheet was submitted by the police against the petitioner u/s 7(a) (ii) of the Essential Commodities Act, 1955 (Act X of 1955). On the same day a petition was made before the learned Sub-divisional Magistrate, Kalna by the District Controller of Food & Supplies, Burdwan through the Court Sub-Inspector in the following terms:

In connection with the above noted case and seizure of paddy I am to request you to be so good as to order disposal of the seized stock of 250 mds. of paddy to M/s. Bhaidarpara Rice Mills, Bhaidarpara on payment of price at Govt. prescribed rate so that the paddy may quickly flow into the market in the shape of rice to normalize the market.

On receipt of that petition the learned Magistrate made the following order on the 21st May, 1964:

Seen prayer for disposal of the seized paddy filed by C.S.I. The paddy is a commodity subject to loss and deterioration and damage and their hoarding may lead to affect the normalcy of the paddy market. In view of the above I consider it expedient that the seized paddy should be sold to a licence holder so that the same may flow into the market normally. I, therefore, order that seized paddy shall be sold to the licence-holder. according to the existing law, nominated by S.C.F. & S., Kalna, S.C.F.S., Kalna shall arrange the sale according to law and deposit the sale proceeds in the Treasury in terms of the order.

2. The principal contention of Mr. Dutta, learned Advocate for the petitioner, is that the seizure of the paddy is illegal. He has referred to certain provisions of the West Bengal Rice and Paddy Control Order, 1964 which was made by the Governor with the prior concurrence of the Central Government in exercise of the powers conferred by section 3 of the Essential Commodities Act, 1955, read with the Government of India, Ministry of Food and Agriculture (Department of Food), order No. GSR888, dated the 28th June, 1961. The Essential Commodities Act, 1955 is "An Act to provide, in the interests of the general public, for the control of the production, supply and distribution of, land trade and commerce in, certain commodities". "Foodstuffs" comes within the definition of "essential commodity" under the said Act. The West Bengal Rice and Paddy Control Order, 1964 is the successor of the West Bengal Rice and Paddy Control Order, 1960 which again was the successor of the West Bengal Rice and Paddy Control Order, 1957. Possibly the old Order yielded place to a new Order in accordance with changes in the policy of the Government.

3. The relevant provisions of the Order of 1964 to which our attention was drawn by Mr. Dutta are contained in paragraphs 3, 9 and 10. Paragraph 3 relates to "Licensing of certain producers and of dealers". Sub-paragraph (2) of paragraph 3 is quoted below:

No producer in the specified area shall store or have in his possession more than 20 quintals, and no producer in any other area shall store or have in his possession more than 40 quintals, of rice or paddy in the aggregate at any time except under and in accordance with a licence granted under paragraph 4.

Specified area" is defined in the Order as,

Specified area" means the area falling within the five-mile belt all along the border of the State of West Bengal excepting such border with the State of Orissa.

It is not disputed before us that the present petitioner lives in an area which does not come within the" specified area", that is, he lives in "any other area". The expression "except under and in accordance with a licence" obviously means "except under and in accordance with the conditions of a licence."

4. Paragraph 9 of the Order confers certain powers of entry, search, seizure, etc. upon the Director and some other officers. The relevant provisions of paragraph 9 to which our attention was particularly drawn are contained in clause (e) of sub-paragraph 1. Paragraph 9(1) (e) reads as follows:

The Director or any officer not below the rank of a Sub-Inspector of Food or an Assistant Sub-Inspector of Police authorised in writing by the Director in that behalf may, with a view to securing compliance with this Order or to satisfying himself that this Order has been complied with,--

(e) search, seize and remove with such aid and assistance as may be necessary stocks of rice or paddy and the animals, vehicles, vessels, or other conveyances used in carrying the said rice or paddy in contravention of the provisions of this Order, or of the conditions of the licences issued there under and thereafter take or authorise the taking of all measures necessary for securing the production of stocks, of rice or paddy and the animals, vehicles, vessels or other conveyances so seized, in a court and for their safe custody pending such production.

5. Mr. Dutta also referred to the provisions of paragraph 10 and contended that the allowance granted in paragraph 10 should also be read in paragraph 9(1) (e) in order to fix the limit above which the stocks of rice or paddy, can be seized. We have considered this contention but we do not think that the provisions of paragraph 10 can be read in paragraph 9 (1) (e) as contended by Mr. Dutta.

6. Mr. Dutta contends that the total stock of 250 maunds, which was seized by the Sub-Inspector of Food, could not have been seized under the provisions of the aforesaid Order of 1964, that the Sub-Inspector could have at best seized only the quantity in excess of 40 quintals because the power of seizure is conditioned by the provision that the seizure can be made only for the purpose of securing compliance with the West Bengal Paddy and Rice Control Order, 1964. Mr. Dutta contends that the seizure at least in respect of 40 quintals was totally bad. The words "in contravention of the provisions of this Order" in paragraph 9(1) (e) clearly qualify the words "used in carrying". But the question is whether they qualify also the stocks of rice or paddy which were stored or possessed by the producer, viz. the petitioner in the instant case. It is true that after the words "stocks of rice or paddy" and before the words "and the animals, vehicles, vessels or other conveyances used in carrying the said rice or paddy" the words "stored or possessed" have not been used. But the provisions in paragraph 9 (1) (e) cannot be considered in an isolated way divorced from the context. The scheme envisaged in the Order has to be borne in mind and the provisions of paragraph 9 (1) (e) have to be considered along with the provisions of paragraph 3(2) in order to give a coherent meaning which is consistent and in accord with the policy laid down in the Order and we should give the construction which is more in consonance with reason and justice. Paragraph 3(2) clearly means that a producer cannot store or have in his possession paddy in excess of the limits prescribed in the sub-paragraph except under and in accordance with the conditions of a licence granted under paragraph 4. In other words, a producer

can store or have in his possession up to 20 quintals in the specified area and up to 40 quintals in any other area. That quantity cannot be touched by any authority. That being so, the words in paragraph 9 (1) (e) that the specified officer can "seize.....stocks of rice or paddy" can only mean that the officer can seize stocks of rice or paddy stored or possessed in contravention of the provisions of the Order, in other words, in excess of the limit laid down in paragraph 3(2). That construction would not only be consistent with the provisions of paragraph 3 (2) but would also be harmonious. That such a construction is permissible would be clear from the observations of their Lordships of the Supreme Court in the case of (1) Ramaswamy Nadar Vs. The State of Madras, . In an appeal from an order of acquittal the High Court has power u/s 423(1) (a), Criminal Procedure Code to convert an order of acquittal into an order of conviction in respect of an offence other than that for which the accused was tried by the trial Court and acquitted by it, by exercising the powers contained in sections 236, 237 and 238. The contention in that case was that though the powers under sections 236, 237 and 238 may be exercised by a trial court or even by a court of Appeal exercising powers under clause (b) of section 423(1), the High Court hearing an appeal u/s 423 (1) (a) could not exercise those powers. The contention was repelled by Their Lordships of the Supreme Court with the following observations:

Under both the clauses (a) & (b), the specific power to reverse the order appealed from, is there, but because there has been a conviction by the trial court or the court immediately below the High Court, the latter Court is authorized specifically to alter the finding or the nature of the sentence in cl. (b). In cl. (a), after the High Court has decided to reverse the order of acquittal, it has been given the power to find the accused guilty, besides other powers enumerated above. The question naturally arises find the accused person guilty of what?" The answer sought to be given by the counsel for the appellant is that the High Court may find him guilty of the offence with which he stood charged in the court below and of which he was acquitted but not of the offence disclosed by the evidence as that would be adding to the words of clause (a) the words "of the offence disclosed" or words to that effect which would be contrary to the intention of the Code as is shown by the words of clause (b). But this argument is wholly ineffective because in either view of the matter the court has to supply some words in answer to the question "find him guilty of what"? According to the appellant, those additional words should be "of such offence as has been charged and of which he had been acquitted", and according to the other view, "of the offence disclosed". If, in construing the section, the court has to supply some words in order to make the meaning of the statute clear, it will naturally prefer the latter construction which is more in consonance with reason and justice.

In our view the words "stored or possessed" or words to that effect have to be supplied after the words "as may be necessary stocks of rice or paddy" in paragraph 9(1) (e).

7. In that view of the matter it is not necessary to consider the arguments of Mr. Dutta about the constitutional validity of the West Bengal Rice and Paddy Control Order, 1964.

8. The seizure of the paddy possession of which is permitted without a licence under paragraph 3 (2) is illegal.

9. The learned Magistrate does not expressly say that he has directed sale of the paddy under the provisions of section 516A of the Code of Criminal Procedure. Possibly he thought that S. 516A applied. But he passed the order of disposal ex parte without giving the petitioner any opportunity of being heard. Such an order cannot be supported. When on the following day (22nd May, 1964) the petitioner appeared and made a prayer for reconsideration of the order passed by the learned Magistrate regarding disposal of the paddy, he passed an order "Prayer for return of the seized paddy is rejected". No reasons were given by him. Such an order cannot be maintained. It is not necessary for us to decide for the purpose of this Rule whether the Magistrate can make an order u/s 516A in respect of paddy which was seized and produced before him in pursuance of paragraph 9(1) (e) of the West Bengal Rice and Paddy Control Order, 1964 and we do not express any opinion. On the facts of this case it appears that the learned Magistrate made his order on the ground that paddy, in his opinion, was perishable and subject to speedy and natural decay. It is not possible for us to agree with the learned Magistrate that paddy is of such a perishable nature that it should be immediately disposed of. In any case the order directing the sale of the paddy cannot be sustained. Accordingly the order of the learned Magistrate directing sale of the paddy to the aforesaid Mill is set aside. Out of the total stock of paddy seized 20 quintals, if the petitioner is in a specific area, or 40 quintals if he is in any other area shall be released from seizure and the balance of the paddy shall remain in "jimma". The trial shall now proceed in accordance with law as expeditiously as possible and after the trial is concluded necessary orders shall be passed in accordance with law regarding the balance of the seized stock of paddy now directed to be kept in jimma. Since charge-sheet has been submitted, the trial should not be delayed. We do not, however, express any opinion on the merits of the case which involve questions of fact.

Let the records be sent down at once.

A.C. Gupta, J.

I agree.