
(1975) 10 KAR CK 0004
In the Karnataka High Court

Channegowda

APPELLANT

Vs

The State of Karnataka

RESPONDENT

Date of Decision : 23-10-1975

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Karnataka Paddy Procurement (Levy) Order, 1966 — Clauses 3, Clauses 3 (2)

Citation : (1976) CriLJ 576

Hon'ble Judges : M.S. Nesargi, J

Bench : Single Bench

Judgement

M.S. Nesargi, J.—This petition is directed against the conviction and sentence passed on 30-10-1974 by the Judicial Magistrate First Class, Kunigal, in C. C. No. 7 of 1972. The petitioner has been convicted u/s 7 of the Essential Commodities Act, 1955, (to be hereinafter referred to as the Act) for contravening Clause 3 of Karnataka Paddy Procurement (Levy) Order, 1966, (to be herein-air referred to as the Order) and sentenced to pay a fine of Rs. 75/- and in default to undergo simple imprisonment for twenty days.

2. The prosecution case-is that the petitioner grew paddy in the year 1970-71 is survey Nos. 44/2, 50/3, ,50/4, 50/5, 272, 360,, 270 and 266 of Kothagere-Amanikere, Taluka Kunigal. He was to pay levy to the State Government. Hence, P.W. 2 T. N. Siddananjappa, the Enforcement Officer, issued levy demand notice as per Ex. P-12 on 20-7-1971 calling upon the petitioner to sell 7.50 quintals of paddy within a week therefrom. The petitioner did not comply with Ex. P-12 and, hence, P.W. 1 S. G. Gunaga, the Tahsildar, complained to the police and the police prosecuted the petitioner.

3. The defence of the petitioner is that Ex. P-12 was never served on him, and hence, he was not liable to pay. levy to the State Government and as such he has not contravened Clause 3 of the Order.

4. The prosecution has examined P.W. 1 the Tahsildar, P.W. 2 the Enforcement Officer, P.W. 3 R. C. Ghale, the investigating officer and P.W. 4 T. Prahlada Rao,

retired village accountant.

5. The evidence of P.Ws. 1 and 3 is not of material consequence in this case.

6. P.W. 2 has sworn that he issued Ex. P-12 and it was served on Henagar Gowda, son of the petitioner, P. W; 4 has sworn that Honnagiri Gowda, son of the petitioner, and the petitioner are living jointly and that Ex. P-12 was served on Honnagiri Gowda. Now it is to be seen whether service of Ex. P-12 on Honnagiri Gowda is, service according to law so as to hold that the petitioner had been served with Ex. P-12 and he. failed to comply with its requirements.

7. Clause 3(2) of the Order reads as follows:

The Enforcement Officer shall, after determining the quantity of paddy required to be sold by a grower under Sub-clause (1), serve on such grower an Order in the manner laid down in Clause (b) of Sub-section (5) of Section 3, specifying the quantity of paddy to be sold, the purchase point at which and the time within which such paddy is to be delivered.

8. It is evident that service of levy demand notice contemplated in Sub-clause (2) of Clause 3 of the Order has to be made in the manner laid down in Clause (b) of Sub-section (5) of Section 3 of the Act, When that is specifically provided to be so, any other manner of service of such notice would not be according to law.

9. Section 3(5)(b) of the Act reads as follows:?

3. (5). An order made under this Section shall-?

(a)...

(b) in the case of an order directed to a specified individual be served on such individual?

(i) by delivering or tendering it to individual, or

(ii) if it cannot be so delivered or tendered, by affixing it on the outer door or some other conspicuous part of the premises in which that individual lives, and a written report shall be prepared and witnessed by two persons living in the neighbourhood.

10. The evidence of P.Ws. 2 and 4 shows that Ex. P-12 was not served on the petitioner, but was served on Honnagiri Gowda, son of the petitioner. The evidence of P.W. 4 shows and that is also so held by the learned Magistrate that Honnagiri Gowda, son of the petitioner, and the petitioner are living jointly. Ex. P-12 reads to show that the notice is specifically directed to the petitioner only. Therefore, Section 3(5)(b) of the Act applies. The evidence of P.Ws. 2 and 4 does not disclose that Ex. P-12 could not be delivered or tendered to the petitioner because they have not stated anything in that behalf. All that they have stated is that it was served on Honnagiri Gowda, son of the petitioner. Even if Ex. P-12 could not be delivered or tendered to the petitioner, the only other way of serving

Ex. P-12 on the petitioner, was by adopting the procedure prescribed in Clause (ii) of Section 3(5)(b) of the Act. That I? not what has been done in this case. Hence, it will have to be held that service of Ex. P-12 said to have been made on the petitioner, is not in accordance with the provisions of law. Therefore, the stand taken by the petitioner that Ex. P-12 was not served on him In accordance with the provisions of law, is substantiated. In that view of the matter, the petitioner cannot be held guilty of having contravened Clause 3 of the Order. Hence, this petition has to succeed and is allowed. The conviction and sentence passed on the petitioner by the Judicial Magistrate First Class, Kunigal, in C. C. No. 7 of 1972, are set aside and the petitioner is acquitted.