(1990) 12 MAD CK 0050

In the Madras High Court

Case No : Criminal M.P. No. 8245 of 1988

E.I.D. Parry (India) Ltd. and Others APPELLANT

Vs

Central Government RESPONDENT

Date of Decision : 06-12-1990

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 173
Essential Commodities Act, 1955 — Section 3, 7

Citation : (1991) 34 ECC 183

Hon'ble Judges : Janarthanam, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Janarthanam, J.—Petitioners are accused 1 to 3 in STC (EC) No. 8 of 1988 on the file of the Presiding Officer (Special Court under the Essential Commodities Act), Thanjavur.

2. Accused 1, a company going by the name M/s. E.I.D. Parry (India) Ltd, situate at Nellikuppam South Arcot District is manufacturing sugar and other products. During the year 1984-85 accused 2 and 3, then General Manager and acting Factory Process Superintendent, were in charge of and responsible to the conduct of the business of accused-1-company.

3. One B. Karunamoorthy, inspecting Officer (Sugar) of the Directorate of Sugar, Ministry of Food and Civil Supplies, (Department of Food) inspected the factory premises on 18.7.1985 and collected samples of sugar certified to be truly representative samples from the stocks in the factory godowns of 1984-85 season''s production, after duly complying with all formalities. Of these samples collected, one such sample was forwarded to the National Sugar Institute, Kanpur for determining its Indian Sugar Standard Grade and in this, the Grade marked by the factory as ''M-30'' was found, on analysis, to be of Grade ''S-30''. Thereafter, a show cause notice was issued to the factory requiring them to furnish their explanation. The explanation filed by the factory was not found

satisfactory. Consequently, the Director (Sugar Technical), Government of India, Ministry of Food and Civil Supplies, New Delhi in its D.O.letter No. INSP.PRC.F.2334/GC/85/1806/dt.3.10.1986, observed that accused 1 company had violated the provisions of the control order issued under the essential Commodities Act, 1955 (for short ''theAct'') relating to the packing and marking of sugar bags and requested the Government of Tamil Nadu to launch prosecution against the said company.

4. The Government of Tamil Nadu in turn by letter No. 54478/MIDIp86-l, Industries Department, dated 13-11-1986 requested the Director of Sugare, Madras-35 launch prosecution against accused 1- company and he in turn in his letter Rc.No.32217/86, dated 19.11.1986 addressed the Collector of South Arcot, Cuddalore and as per the directions of the Collector, the Civil Supplies C.I.D., Cuddalore--the respondent herein registered the case in Crime No. 69/86 for violation of Clause 4(1) of the Sugar (Packing and Marking) Order, 1970 (for short ''1970 order'') and took up further investigation.

5. After completing the formalities of the investigation, a final report u/s 173(2) Crl. P.C. had been laid against accused 1 to 3 for the aforesaid violation, which is now pending in the said Summary Trial case.

6. On receipt of process, the petitioners came forward with the present action invoking the inherent jurisdiction of this Court to quash the criminal proceedings initiated against them.

7. Learned Counsel appearing for the petitioner would contend that violation of Clause 4(1) of 1970 order, an order passed in exercise of the power conferred by Clause-5 of the Sugar (Control) Order 1966 (for short ''1966 order'') can by no stretch of imagination be stated in the eye of law, to be a contravention of the provisions of 1966 order, which is an order passed u/s 3 of the Act. He would however submit that the violations of the provisions of 1966 order is punishable u/s 7 of the Act and a person can be convicted u/s 7 thereof only when it is proved that he has contravened any order made u/s 3 of the Act. In pith and substance, what he would say is that the contravention of Clause 4(1) of 1970 order cannot at all be stated to be contravention of the provisions of 1966 order liable to be punished u/s 7 of the Act.

8. Learned Public Prosecutor would however repel such submissions.

9. I may now delve deep to find the tenability or otherwise of the submissions of either counsel, in the light of the provisions adumbrated under 1966 Order, 1970 order and the Act.

10. Towards this arduous task and venture I may refer to the Division Bench decision of the Calcutta High Court reported in Superintendent and Remembrancer of Legal Affairs, West Bengal Vs. Prohlad Agarwalla, (cited by the learned Counsel for the petitioners). The arguments raised therein, in the light of the facts of that case, if considered at length, will surely throw enough lith (sic)

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for arriving at a proper conclusion in the case on hand.

11. There was a firm going by the name Messrs. Nandaram Deotram and the firm was an authorised dealer in iron and steel under the Iron and Steel (Control) Order 1956 (for short ''1956 Order''). An employee of the firm sold three bundles of galvanished corrugated sheets (GC sheets) to one Beharilal Bahasaria against a permit granted by the Sub-Divisional Controller of Food and supplies. The said purchaser paid Rs. 294-52 and a cash memo was written and granted to him mentioning the rate at Rs. 880/- per ton. The weight was not however mentioned in the cash memo. The purchaser had certain suspicion about the weight and therefore got the three bundles weighed and found the total weight as 5 Cwt. 3 Qrs. 6 lbs. whose price at Rs. 880/- per ton would be Rs. 255.34. Consequently, the purchaser leveled an allegation against the employee that he sold GC sheets at a rate higher than the controlled rate. On this allegation the employee was charged u/s 7 of the Act for having contravened paragraphs 15 and 27(4) of 1956 order.

12. The trial Magistrate found that the employee-accused did not charge a rate in excess of the controlled rate but he held that the employee did not mention the weight of the GC Sheets in the cash memo, which he was required to do under notification No. S.R.O. 1111/ESS. Comm. Iron & Steel and on this finding, learned Magistrate convicted him u/s 7 of the Act. Learned Sessions Judge set aside his conviction primarily on the ground that there was want of mens rea in what the respondent did, namely, in not mentioning the weight of the G.C. Sheets in the cash Memo. Aggrieved by the order, the State Government had filed an appeal against acquittal. Learned Judges of the Calcutta High Court comprising the Division Bench did not think it necessary to consider the grounds for which learned Sessions Judge sought to set aside the conviction of accused. But, they went to the extent of saying that even otherwise, the accused cannot be convicted u/s 7 of the Act on the findings of learned Magistrate. Learned Judges held that contravention of a direction, contained in a notification issued under paragraph 14(2) of 1956 order, is not a contravention of 1956 Order and so he is not punishable u/s 7 of the Act.

13. The case on hand is exactly similar to the case to which learned Judges of the Calcutta High Court had the occasion to consider the effect of the salutary provisions adumbrated under paragraph 14(2) of 1956 Order. There is no manner of doubt whatever that 1966 Order had been made by the Central Government, in exercise of the powers conferred by Section 3 of the Act. Clause 5 of the said Order gives power to the Central Government to issue directions to producers and dealers and it is couched in the following terms:

5. Powers to issue directions to producers and dealers:-The Central Government may, from time to time by general or special order, issue to any producer or recognised dealer, or any class of producers or recognised dealers, such directions regarding the production, maintenance of stocks, storage, sale, grading, packing, marking, weighment, disposal, delivery and distribution of any

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kind of sugar as it may deem fit.

14. It is only pursuant to the power under Clause 5 of 1966 Order, the Central Government made 1970 Order and Clause 4(1) of this Order, which is relevant for our purpose is in the following terms:

4. Marking on bags:-(1) Every producer shall at the time of packing mark on the bag in which the sugar is packed, its quality in terms of Indian Sugar Standards in force at that time and shall also ensure that the quality of sugar contained in the bag corresponds to the quality of sugar marked thereon until it is sold and delivered by him.

15. It should be emphasized here that the prosecution against the petitioners is for the violation of Clause 4(1) of 1970 Order and this Order is not one passed by the Central Government, invoking the powers conferred by Section 3 of the Act. Clause 5 of 1966 Order does not at all contain any positive acts to be done by the purchasers and dealers so that the violations of which would be liable to be punished u/s 7 of the Act. It is the violation of Clause 4(1) of 1970 Order that is alleged against the petitioners for their being prosecuted u/s 7 of the Act. The provisions of 1970 Order, not having been made by the Central Government, as already referred to, u/s 3 of the Act, it goes without saying that the violations of the provisions of this clause cannot at all be stated to be a violation of the provisions of 1966 Order for making the petitioners liable to be prosecuted u/s 7 of the Act.

16. Learned Public Prosecutor, at this juncture, would venture to make a submission that the Division Bench decision of the Calcutta High Court, as referred to earlier, will have no application to the facts of the present case. In elaboration of this submission, what he would submit is that in that case, the Controller issued notification under the enabling provision as adumbrated under Paragraph 14(2) of 1956 Order requiring the stockholders to issue a Memorandum of relating to every sale of iron and steel showing certain particulars and weight of the goods sold is one such particulars. The issuance of such notification by the Controller would amount to a delegation of power by the Central Government, which is not permissible, as it would involve double delegation of legislative power, not authorized by the Parliament. The case on hand, he would say, is different by stating that the very authority, namely, the Central Government, which made 1966 Order, in exercise of the powers u/s 3 of the Act, has made Order 1970 under the enabling provisions of Clause 5 of 1966 Order. If this distinction is borne in mind, he would say, the Division Bench decision of the Calcutta High Court may not be of any assistance in deciding the moot question posed in this case.

17. Learned Counsel appearing for the petitioners would however counter the argument of learned Public Prosecutor. What he would say is that the Division Bench decision of the Calcutta High Court, apart from considering the double delegation of legislative power, has also happened to consider independently the

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salutary effect of Paragraph 14(2) of 1956 Order and notification issued thereunder by the Controller by comparing such provisions to the provisions contained in Paragraph 12(1) of the said Order. Paragraph 12(1) says that every stock-holder shall keep such books, accounts and records relating to the business carried on by him, as the Controller may require. Obviously, the requirement to keep books of accounts and records is a part of 1956 Order. But what books are to be kept is left to the discretion of the Controller. If a stock-holder does not keep the required books and accounts and records, that act, being a contravention of the provisions of 1956 Order, is punishable u/s 7. But, paragraph 14(2) does not require the stockholder to do a particular thing. It only empowers the Controller to give directions to the stock-holders to give a memorandum of sale containing some specified particulars. So saying learned Judges expressed their views by saying that they had no doubt that contravention of a direction, contained in a notification issued under paragraph 14(2) of 1956 Order, is not a contravention of the provisions of 1956 Order and so is not punishable u/s 7 of the Act.

18. As referred to earlier, the case on hand in exactly identical to the Division Bench decision of the Calcutta High Court and in this view of the matter, the contravention of the provisions of Clause 4(1) of 1970 Order cannot at all be stated to be a contravention of the provisions of 1966 Order, thereby punishable u/s 7 of the Act. The petition as such deserved to be allowed.

19. In the result the petition is allowed and the proceedings initiated against the petitioners in S.T.C.E.C. No. 8 of 1966 on the file of the Special Court (under the Essential Commodities Act) Thanjavur shall stand quashed.

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