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(1970) 04 SC CK 0016

In the Supreme Court Of India

Case No : Criminal Appeal No. 90 Of 1967

Ganga Prasad and Others — APPELLANT

Vs

The State of Bihar — RESPONDENT

Date of Decision : 02-04-1970

Acts Referred:

Essential Commodities Act, 1955 — Section 3

Citation : AIR 1970 SC 989 : (1970) CriLJ 895 : (1970) 3 SCC 92 : (1970) 1 SCC(Cri) 564

Hon'ble Judges : M. Hidayatullah, C.J;G. K. Mitter, J;A. N. Grover, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

G.K. Mitter, J.—This is an appeal by special leave from an Order of the High Court of Patna dismissing in limine the appellants application for challenging their conviction u/s 7 of the Essential Commodities Act and sentence of a fine of Rs. 500/- on each or la default simple imprisonment of six months.

2. The fads are as follows, On 9th August 1965, the District Supply Officer of Arrah noticed a cart loaded with six bags of rice being taken out of a go down belonging to the firm of Ganga prasad Siteam whereof the appellants were partners. Not satisfied with the explanation given by the cartman in answer to his query as to the destination of the rice he entered the go down and checked the stock register and other relevant papers. He obtained a statement in writing Ex. 1 from the appellant Ganga Prasad of the food-grains received by him on August 9, 1985. He had the transactions verified by his supply inspector. At his direction Ganga Prasad also made out another list giving full details of all the food grains of different kinds held in stock on that day. This was marked as Ex. 1/1 in the proceedings before the Magistrate. He had the entire stock weighed and verified. He took away the books of account of the appellants including the stock register, Gariwani Bahi (register of carts bringing food grains), cash and credit memo books. The stock of food grains in the go down was seized on

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August 12, 1965. More than a month thereafter a complaint was lodged by the District Supply Officer in the Court of the Sub-Divisional Officer Arrah, Sadat, charging the appellants and three other persons with contravention of Clause 7 of the Bihar Food Grains Licensing Order 1963 promulgated under Section. 3 of the Essential Commodities Act, 1955 and triable summarily u/s 12-A of lie Essential commodities Act Leaving out of account certain minor irregularities alleged to have been committed by them the gravamen of the charge was that the appellants had on the date of Inspection of the go down by the said officer stored 72 bags of rice not of entered in their stock register.

3. Even before the lodging of the complaint and subsequent thereto the appellants filed to the Court of the Sub Divisional Magistrate a number of petition for release of the food grains sized. The Order sheet shows that the Magistrate directed the, District Supply Office to submit his report dealing with each paragraph of the petition presented on the 1st September 1965. Little heed appears to have been paid to this requisition. The complaint filed on September 16, 1965 shows that nine items of food grains had been seized by the District Supply Officer including 1021 bags of rice. The District Supply Officer however did not file a copy of the seizure list nor the books of account seized nor the original statement in writing of Ganga Prasad dated tie 9th August showing the arrival of food grains at the go down on that day. As the complaint was limited to the item of 72 bags of rice alleged to have been found in the stock in. excess of the quantity shown on the register, the appellants filed a petition before the Magistrate for release of all the other food grains. The Order sheet under date October 18 records that the District Supply Officer did not want to reply to the query made by the Court. The Magistrate passed an Order of release of all the food grains including 949 bags of rice but excluding the above mentioned 72 bags.

4. Several witnesses were examined before the Magistrate hearing the case in 1966. The defence did not call any evidence but relied on their books of account to show that the complaint was not justified. The Magistrate found against the appellants mainly on the case made by the prosecution that there had been tampering with Ex. 1 while in the custody of the Supply Department. According to the prosecution Ex. 1 before it was tampered with had sixteen figures under the column "rice" of which the first was 10 and the fourth 81 and the total of the figures in the column in the handwriting of Ganga Prasad was 1137. The document as it stands now shows the first item as the figure 100 and the fourth 61. If these were the figures originally entered by the appellant, the total should not have been 1137 as recorded by Ganga Prasad but 1207. The case of the appellants was that the figure under the column for rice had been wrongly to totalled as 1137 and should have been recorded as 1207 and that the figure in the first column was 100 and the fourth 61 as originally entered but that someone had done some over-writing not only on these but on several other figures as well It was their further case that two bags of rice had been wrongly re corded under the column for peas and that the correct figure with regard to the

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arrival of bags of rice in the go down on 9th August was 1209. The learned Magistrate accepted the prosecution case which was based on the copies of Exs. 1 and 1/1 attested by a Magistrate and marked as Exs. 15/3 and 15/2. The Magistrate does not appear to have looked at the other documents including the stock book and the cart register to see whether there were any discrepancies between the figures as recorded therein and those made out by the appellant in Exs. 1 and 1/1 under the instructions of the District Supply Officer. He held that the prosecution had proved its case with regard to the 72 bags and convicted the appellant as stated above.

5. As the High. Court dismissed the revision petition summarily we have not had the benefit of its judgment or the reasons which impelled the High Court to turn down the contention of me appellants. Before us counsel for the appellants contended that although Ex, 1 and She attested copy thereof Ex. 15/2 appear to contain manipulations these could not have been done by the appellants or for their benefit. Ex. 1/1 which shows the total stock of food grains in the go down contains various figures in three columns raider the head "rice". The figures to. these three columns add up to 1330. There is no suggestion of any interpolation, so far as these figures are concerned. Ex. 10 the cart register which records the different quantities of food grains received at the go down by truck or cart on 9-8-1965 contains 16 items, the total whereof comes to 1207. There is no dispute that on 8th August there were in stock 121 bags of rice. If the appellants' case with regard to two bags of rice wrongly recorded as peas be accepted, the total number of bags of rice in the go down on 9th August when the inspection was made by the Supply Officer comes to 1330. This fits in with the appellants case as made in the petition presented to the Sub-Divisional Officer, Sadar Arrah on 21st September 1965 showing that there were 1330 bags of rice in the go down on 9th August and that 309 bags of rice had been sold in between 9th August and 12th August when a stock of 102.1 bags was seized. The appellants prayed for release of the entire stock of food grains with the exception of 72 bags of rice i.e, the subject matter of the complaint. They expressly stated that 949 bags (1021-72) of rice should be released. Before us there was no challenge with regard to these figures and counsel for the respondent was unable to point out any flaw in the argument advanced on behalf of the appellants that the books of account of the appellants disclosed that all the bags of. rice stored m the go down had been duly accounted for and that the total of 1137 bags as recorded in Ex. 1 was only due to an error in adding up the different figures. The figures culled from the stock register, the cart register and the evidence adduced in the case leave no room for doubt that the appellants version was the correct one and that they had not failed to amount for the presence of any bags of rice in their go down of 9th August. It did however appear to us by a look at the original of Ex. 1 as compared wife the attested copy Ex. 15/2 that there was some over-writing on the first four figures in the column headed "rice". The appellants could not explain how the figure 1137 was arrived at and Counsel suggested that ft had crept to through an error. The first four figures raider the column "rice" in Ex. I

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incite suspicion and afford room for the contention that there was some interpolation or overwriting. But assuming that the document has been tampered with it is not possible to hold the appellants responsible for it. the stock register and the cart register taken possession of by the District Supply Officer on August 9 about the genuineness of which no question was raised falsifies the document Ex. 1 if the first and the fourth figures be taken as 10 and 81. The appellants did not stand to benefit by over-writing or interpolation in Ex. 1 unless they could also make similar interpolations or over-writing in the stock register and the cart register.

6. We accept the ease of the appellants that the stock of rice in the go down on August 8 was 121 bags and that 1209 bags were received by trucks or carte 9th August including two bags of rice which were wrongly recorded as peas. We also accept the appellants' case that there were 1330 bags of rice In stock on 9th August and that 1021 bags constituted all the stock of rice in the go down when the seizure of the food grains took place on 12th August, These being the correct figures there was no need for the appellants to make any interpolations la Ex. 1. In our opinion, the evidence points to the manipulations having been made while the document was in the custody of the Supply Officer or his depart meat and the fitting of' a copy of Ex. 1 as interpolated before attestation by a Magistrate was with a sinister motive. We cannot also fail to record that the withholding of the books of account of the appellants for a space of more than two months was not justified on the facts of the case. It appears to us that a false case was deliberately launched against the appellants and mat the manipulation in Ex. I accounts for the delay in the filing of the complaint after the seizure of the stock. The appeal is allowed. The fine, if paid, will be refunded. We hope that the authorities concerned take note of our comments on the working of the Supply Department.

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