(1984) 02 MP CK 0001

In the Madhya Pradesh High Court

Case No : Miscellaneous Cri. Case No. 601 of 1983

Jethalal Nemchand and Sons and others APPELLANT

Vs

State of M.P. RESPONDENT

Date of Decision : 15-02-1984

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7
Madhya Pradesh Essential Commodities (Exhibition of Prices and Price Control) Order, 1977 — Clause 6(1)

Citation : (1984) JLJ 439 : (1984) MPLJ 204

Hon'ble Judges : C.P. Singh, J

Bench : Single Bench

Advocate : V.B. Ganatra, M.L. Bansal and C.R. Khanvilkar, for the Appellant; Puntambekar for State, for the Respondent

Final Decision : Allowed

Judgement

C.P. Singh, J.

By this petition u/s 482 of the Code of Criminal Procedure, the petitioners pray for setting aside the criminal proceedings pending against the petitioners Nos. 2 and 3 for violating clause 6 (1) of the M.P. Essential Commodities (Exhibition of Prices and Price Control) Order, 1977 (to be referred to simply as the Order) made u/s 3 of the Essential Commodities Act (to be referred to simply as the Act) arid made punishable u/s 7 of the Act.

The petitioner No. 1 are the registered partnership firm. The petitioner No. 2 is a partner of the firm and the petitioner No. 3 is a Munim of the petitioner No. 1. On 18-3-1980, M/s Samarsingh Bhadoria and G.D. Shelke, both Inspectors of Food and Civil Supplies Department went to the godowns of the petitioners and seized 498 quintals, 14 kgs. and 100 grams of whole chillies contained in 2023 bags and 437 quintals, 80 kgs. and 700 grams of whole dhania contained in 1074 bags. It was found that the petitioners had not maintained the ''Daily Stock Register'' of the seized chillies and dhania. The Food Inspector Mr. Bhadoria, thereupon, reported the matter at Sanyogitaganj Police Station and a prosecution of only the petitioners Nos. 2 and 3 followed before the Chief Judicial Magistrate, Indore on 12-3-1981.

The law is clear that the inherent powers of the High Court u/s 482 of the Code of Criminal Procedure are to be sparingly used and are not available when there is a specific provision for seeking redress elsewhere under some other provision of the Code. Though the powers inherent in nature are in a way restricted inasmch as they are exercisable to make such orders as may be necessary to give effect to any order under the Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The first contention by the Learned Counsel for the petitioners is that the provisions of M.P. Essential Commodities (Exhibition of Prices and Price Control) Order, 1977 regarding the maintenance of a daily stock register did not apply to the petitioners because their turnover during the preceding year had exceeded Rs. 1,00,000.

I find that the contention prevails. The First Information Report, inter alia, alleges that the petitioners'' firm had not maintained a Daily Stock Register even though its turnover had exceeded Rs. 1,00,000 annually. This allegation is reiterated in the statement of the Food Inspector Mr. Samarsingh Bhadoria of 9-3-1981 during investigation. Clause 6 (1) of the Order lays down as follows :?

Every dealer, other than a retail dealer, whose turnover during the preceding year does not exceed one lakh rupees, shall maintain proper accounts of the purchase and sale of essential commodity showing the price of purchase, price of sale as the transactions take place and the balance in stock on each day at the close of the day.

The petitioners have submitted their turnovers for the previous five years. They are not disputed by the respondents, and they all far exceed the turnover of Rs. 1,00,000 annually. The petitioners not being retail dealers and they not being dealers whose turnover during the preceding year had Dot exceeded one lakh rupees, they were not required to maintain proper accounts of purchase and sale of chillies and dhania under clause 6 (1) of the Order.

Even though the order with regard to the petitioners maintaining proper accounts of purchase and sale did not apply, it appears that they had fulfilled the requirement of the Order in its spirit. The Order in terms does not make any reference to ''Dainik Stock Register'' as such. The First Information Report records, among other matters, the petitioners being a licensed firm dealing, among others, in pulses, oilseeds, edible oil and sugar; the firm having displayed the prices and the stock of different commodities available with it, Daily Stock Register completed till 18-3-1980 (the date of the alleged violation), the stock of the firm-having been found correct after verification, the firm having been found to be dealing also in chillies and dhania regarding which it having displayed their prices and the stock and the particular number of sacks left with the firm after selling those commodities. These facts are again reiterated in the statement of the Food Inspector Mr. Bhadoria. It, therefore, appears to me that the spirit of the Order had apparently been complied with and that is assuming the Order includes the petitioners which it, as already seen, does not do.

In Ramkishan and another v. The State Misc. Criminal Case No 993 of 76 decided on 24-9-1976 though it was in a different context, where the alleged breach on the part of the accused was under clause 6 (2) of the Order inasmuch as the petitioners therein had not issued to buyer separate receipts, but had accounted for those transactions as ''Chillar Khata'', K.K. Dube J. considering the terms of clause 6 (4) of the Order came to the conclusion that the spirit of the provision had been complied with when the petitioners bad for the purpose of accounting shown the sums under the head ''Chillar Khata''. It is not disputed by the teamed counsel for the respondents that the petitioners bad maintained the bill-books, Rokar, Jama Nond, Udhar Nond, Khata-Bahi and Stock Register.

No doubt, the officer which each of the two inspectors under clause 8 (1) (ii) of the Order is, has power to enter, inspect or break opens and search any premises, vehicle or vessel, but only where he has reason to believe that any contravention of the provisions of the Order has been or is being or is about to be committed, within the meaning of sub-clause (a) of sub-clause (1) of clause 8 of the Order. The words ''Reason to believe'' are significant and are aimed at protecting the liberty of am individual or collection of individuals. There has, therefore, to be some grounds for the belief of the officer entering into and searching the premises. The reasons for belief have to be spelt out in nature of a memorandum before entry or inspection of premises. (See: K.L. Subbayya Vs. State of Karnataka, and Hindustan Aluminium Corporation Ltd. Vs. Controller of Aluminium and Others, . There is no memorandum setting out the reasons of belief of the concerned officers to inspect the premises of the petitioners.

To begin with, when the order in question came into force on 26-9-1977 it had only 12 entries with reference to its clause 2 (6) if construed along with the schedule. ''Chillies'' and ''Dhania'' were not included in the schedule. Chillies and dhania came to be included as entry No. 15 in the schedule since June, 1978 and they were again deleted by Gazette Notification No. 3659-2162-XXIV-(1) 80 of 2nd July, 1980 In short, on 18-3-1980 these commodities were among the essential commodities and if in relation to them some violation had been made, it had constituted offence punishable u/s 7 of the Act. But where the nature of violation is only temporary, from the decision in M/s Rayala Corporation (P) Ltd. and another v. The Director of Enforcement, New Delhi AIR 1970 SC 494, it would appear that the continuation of the prosecution would not be good.

The petitioner No. 1 as such, has not been prosecuted. In the State of Madras Vs. C.V. Parekh and Another, where the company was not charged with at all, it was held that the liability of the person in charge of the company could arise only when the contravention was by the company itself. There is no material on record (the First Information Report and other documents) to come prima facie to the conclusion that the accused petitioners Nos. 2 and 3 were in charge and were responsible for the conduct of the business of the company.

For these reasons, the continuation of the prosecution of the petitioner Nos. 2 and 3 would not be in the interest of justice. The petition is allowed and the proceedings pending before the Judicial Authority (Chief Judicial Magistrate) Indore are set aside.

