

(1987) 07 MAD CK 0058

In the Madras High Court

Case No : Criminal App. No. 446 of 1984

K. Marimuthu, V. Ramu and S. Thangamani

APPELLANT

Vs

State Inspector of C.S.C.I.D., Thanjavur

RESPONDENT

Date of Decision : 22-07-1987

Acts Referred:

Citation : (1987) LW(Cri) 392

Hon'ble Judges : Maheswaran, J

Bench : Single Bench

Advocate : S. Shanmugavelayutham, for the Appellant; A.N. Rajan, Govt. Advocate (Crl.), for the Respondent

Final Decision : Allowed

Judgement

Maheswaran, J.—This appeal is directed against the order in S.T.C. No. 17 of 1984 on the file of the Special Judge for Essential Commodities Act cases, Thanjavur, finding the accused guilty of violating Cl.4(1) of the Tamil Nadu Paddy and Rice (Regulation of Trade) Order, 1974 and under Cl.3(1-A) of the Tamil Nadu Paddy and Rice (Restriction on Movement) Order, 1982 read with S. 7(1)(a) (ii) of the Essential Commodities Act and sentencing them each to rigorous imprisonment for three months under each charge and also fine of Rs. 500 under each charge.

2. On 22.11.1983 at about 9-00 p.m. at Thanjavur-Tiruchirapalli Road, the mini lorry bearing registration number, MSW 2264, was intercepted by P.W. 3. Inspector of Police, near Pudukudi Checkpost. He recovered forty one bags of paddy of ADT-36 variety when the accused were attempting to transport paddy from Thanjavur to Tiruchirapalli. In other words, they were trying to carry over paddy outside the places notified under Cl.3(1A) of the Paddy and Rice (Restriction on Movement) Order, 1982. P.W. 3 seized the paddy under a mahazar, Ex. P2 in which P.W. 1 has attested. P.W. 3 registered a case in Crime No. 485 of 1983 and took up investigation and obtained sanction from the Collector and filed the charge-sheet.

3. The defence was that the lorry was not intercepted within Thanjavur District, but only near Thuvakudi in Tiruchirapalli district. The trial Magistrate, as earlier pointed out, found the accused guilty of the offences charged and convicted and sentenced the accused.

4. I may at once pointed out that Cl.4(1) of the Tamil Nadu Paddy and Rice (Regulation of Trade) Order is not attracted as it has not been proved that the appellants have started afresh or that they carry on business as wholesaler in paddy and rice. There is also no evidence of the appellants doing business or that they carry on business as wholesale dealers. That apart, a perusal of the sanction order shows that prosecution was sanctioned for contravention of Cl.4(1) of the Tamil Nadu Paddy and Rice (Regulation of Trade) Order, 1974 and Cl.3(1A) of the Tamil Nadu Paddy (Restriction on Movement) Order, 1982 for purchase of paddy in Thanjavur District without a valid licence. Obviously, the Sanctioning Authority has not applied his mind to Cl.4 of the Tamil Nadu Paddy and Rice (Regulation of Trade) Order, 1974. Had he only looked into the order, he would have found that Cl.4 refers to the licensing of wholesaler and refers to starting afresh or carrying on business as a wholesaler in paddy or rice. That sanction order is therefore bad.

5. It is next contended by the Learned Counsel for the appellants that the prosecution has not proved that Cl.3(1A) of the Tamil Nadu Paddy and Rice (Restriction on Movement) Order, 1982 has been violated. Cl.3(1A) of the Tamil Nadu Paddy and Rice (Restriction on Movement) Order, 1982 runs thus:

No person shall transport, move or otherwise carry or prepare or attempt to transport, move otherwise carry, or aid or abet in the transport, movement or otherwise carrying of paddy outside the places notified under Cl.3 of the Tamil Nadu Paddy and Rice (Regulation of Trade); Order, 1974 by road/rail or otherwise.

Learned Counsel pointed out that there is no proof as to what is the notified area. The prosecution ought to have filed the order notifying the area.

6. The notification in question is not one which a Court can take judicial notice of, for this notification is one which is executive in character. Even a Gazette notification has to be properly filed and proved. In the absence of such notification before the Court and in the absence of such notification notifying the area, the appellants cannot be found guilty of violating Cl.3 (1A) of the Tamil Nadu Paddy and Rice (Restriction on Movement) Order, 1982. The proper course to be adopted under such circumstances is to set aside the convictions and the sentences imposed on the appellants and to remit the matter for a de novo trial.

7. The appeal is allowed, the convictions and the sentences are set aside and the matter is remitted for de novo trial. As this is an old case, the Special Judge will expedite the trial. Fine amount, if any, paid, will be refunded.