
(2006) 03 KL CK 0046

In the High Court Of Kerala

Case No : Criminal A. No"s. 162 and 463 of 1999

Karim

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 28-03-2006

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 460, 461
Essential Commodities Act, 1955 — Section 12(9), 7(1)

Citation : (2006) 2 ILR (Ker) 369 : (2006) 2 KLT 874

Hon'ble Judges : M. Sasidharan Nambiar, J

Bench : Single Bench

Advocate : P. Vijaya Bhanu, S.R. Manoj and O.V. Maniprasad, for the Appellant;
P.A. Raziya, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

M. Sasidharan Nambiar, J.—Appellant in Crl. A. No. 162/99 was convicted for the offence u/s 7(1)(a)(ii) of Essential Commodities Act (hereinafter referred to as E.C. Act) by Special Judge for E.C. Act cases, Thrissur in S.T. No. 16/1995. Appellant in Crl.A. No. 463/99 was convicted for the same offences by the same court in S.T. No. 8/95. Case against the appellant in Crl. A. 162/99 was that he unauthorisedly stored 225 litres of diesel in violation of Clauses 6 and 7 of Kerala Motor Spirit and High Speed Diesel Oil (Maintenance and Regulations of Supplies) Order 1979 and thereby committed the offences. Case against appellant in Crl.A. 463/99 was that he being the proprietor of grocery shop stored 1029 kgs. of rice, 477 kgs. of cereals and pulses, 66 Kgs of sugar and 120.65 kgs. of baby food without any license and without keeping the accounts and stock register and without displaying the price list and stock board and thereby violated the provisions of Clause 3 of Kerala Food Grains Dealers Licensing Order, Clauses 3 and 5 of Kerala Edible Oils Vanaspati and Baby food Dealers" Licensing Order 1975 and Clause 3 and 6 of Kerala Essential Commodities (Maintenance of Accounts and Display of Price List and Stocks) Order, 1980 and Clauses 3 and 4 of Kerala Pulses Dealers Licensing Second Order, 1967 and thereby committed

the offence. Both the appellants pleaded not guilty. They were convicted by learned Special Judge as per judgment dated 22/1/1999 and judgment dated 24/6/99 respectively.

2. As the points to be considered in both the appeals are identical, they are disposed by common judgment.

Points for determination in the appeals are:

(1) Whether Special Judge for E.C. Act cases, Thrissur which ceased to have jurisdiction to try offence under E.C. Act as the Essential Commodities Amendment Ordinances lapsed and were not replaced by enactments.

(2) If the trial of the appellants are vitiated whether the cases are to be sent back for fresh trial and disposal by competent Magistrate.

3. Learned Counsel appearing for the appellants vehemently argued relying on the decision of Apex Court in State of Tamil Nadu Vs. Paramasiva Pandian, that after 31/8/1998 court below had no jurisdiction to try or to convict appellants for the offences under E.C. Act and therefore trial and conviction are vitiated and therefore appellants are entitled to be acquitted. Relying on the decisions of apex courts in State of Uttar Pradesh Vs. Sabir Ali and Another, , State of Madhya Pradesh Vs. Bhooraji and Others, , decision of a single Judge of this Court in Mahadeva Iyer v. State of Kerala 2004 (2) KLT 562 and various High Courts in Sonelal v. State of Madhya Pradesh and Anr. 1972 MP LJ 763 Sridhar Jha Vs. Emperor, State of Orissa v. Khalli Patro 1985 (2) Crimes 824 Chandana Surya Rao v. State 1989 CriLJ 2077 Nandkishore Panigrahi Vs. Mayadhar Nayak and Others, it was vehemently argued that appellants were facing trial and threat of conviction for the last seven years and that too not for their fault and it is not in the interest of justice to prolong the agony further and therefore appellants are to be acquitted and are not to be driven for a de novo trial by a competent court. It was argued that appellants cannot be made to suffer for the mistake committed by the court in trying the appellants without jurisdiction and therefore appeals are only to be allowed. Learned Public Prosecutor submitted that if it is to be found that trial court had no jurisdiction and the trial is vitiated, the only course open is to send back the records for fresh trial by competent court and appellants cannot be acquitted.

4. Question whether special court constituted for trial of E.C. Act cases have jurisdiction to try the offence under E.C. Act subsequent to 31/8/1997 is no more res Integra in view of declaration of the law by the Supreme Court in State of Tamil Nadu Vs. Paramasiva Pandian, . Special Court for trial of E.C. Act came into existence as provided u/s 12(9) of E.C. Act. The Act was enforced initially for five years and was later extended for a further period of five years from 1987 to 1992 and again extended for five years from 1992 to 1997. The Act was in force till 31/8/1997. It was thereafter Central Ordinance, 1997 was promulgated as B.C. Special Provisions Ordinance. Again Central Ordinance, 1998 was promulgated as no enactment of E.G. Amendment Act was in force at that time.

But on failure to replace the ordinance by enactment, the ordinance lapsed. As a result special courts established for trial of E.C. Act cases ceased to function. Apex court declared the result of lapse of ordinance thus.

The consequential position that followed was that cases registered under the E.G. Act were to be tried before the Magistrate having jurisdiction as it was being done prior to enactment of E.C. (Special Provisions) Act, 1981.

Both appellants were tried and convicted by special court subsequent to 31/8/1997. Therefore special Judge had no jurisdiction either to try the appellants or to convict them as has been done in these cases. Therefore trial and conviction are vitiated.

5. Crucial question to be decided is the consequence of trial and conviction which is vitiated due to want of the very jurisdiction. Section 460 of Cr.P.C deals with irregularities which do not vitiate the proceedings. Section 461 deals with irregularities which vitiate the proceedings. u/s 461 if a Magistrate, not being empowered by law in this behalf, does any of the things enumerated in Clause (a) to (q), his proceedings shall be void. Therefore if a Magistrate not being empowered by law tries an offender, as provided under Sub-clause (1) or passes sentence as provided under Sub-clause (h) the proceedings shall be void. That exactly is the position herein. As Special Judge had no jurisdiction to try or convict appellants for the offences under E.C. Act after 31/8/1997 the trial and conviction are void as provided u/s 461 of Cr.P.C.

6. If the trial itself is void consequence will be that the accused are not tried for the offences charged. If that be the case, definitely the case has to go back to the competent Magistrate for trial and disposal in accordance with law. Though learned Counsel appearing for appellants vehemently argued relying on various decisions, this point has not been directly considered in any of the decisions. In State of U.P. v. Sabir Ali and Anr. AIR 1964SC 1673 Magistrate of the First Class had no jurisdiction tried an offence under Sub-section 1 of Section 15 of U.P. Private Forests Act, 1948 and convicted him. Apex Court held that provisions of Cr.P.C with provisions of Section 15 of Forest Act clearly show that offences u/s 15 are not triable by any Magistrate in view of the clear words in Section 29(1) and trial of the cases ought to have been before a court designated in Section 15(2). As the trial was before a Magistrate, who was not empowered to try the offence, the proceedings were declared void. The said decision did not deal further on the question whether the accused has to be tried before the competent court or not. Apex court also did not acquit the accused in that case. So long as there is no trial and a trial which is void is not a valid trial, without trial an accused cannot be acquitted.

7. A learned Single Judge of this Court in Mahadeva Iyer Vs. State of Kerala, in an identical case where the accused was tried and convicted by a special court after finding that special court had no jurisdiction to try the case in view of the decision of apex court in Pararnasiva Pandian's case (supra) considered the

merits of the case and found the accused not guilty and acquitted him. That decision also has no application on the question to be decided in these appeals as the question was not considered therein. If the trial is vitiated and accused was convicted by a court which is not empowered to try the same, the evidence recorded in such trial cannot be used for acquitting him. When trial is void as provided u/s 461 of Cr.P.C there cannot be an acquittal without a trial.

8. Facts of the case in State of Madhya Pradesh Vs. Bhooraji and Others, were different. In that case appellate court held that a de novo trial is not warranted as the appellate court had all the powers to decide the disputed question, on the evidence on record. That is not the case herein. When the trial is vitiated and is held to be void this Court cannot consider the question whether the accused committed the offences or not. That could be decided only after trial by a competent court. The other decisions relied on by learned Counsel appearing for the appellants also did not deal with the question involved in these appeals. In none of the decisions the effect of a void trial and the question whether in such a case accused is to be tried by a competent court was not considered. Therefore they are not helpful to decide the point involved in these appeals.

9. In view of the settled position that special court had no jurisdiction to try or to convict the appellants and trials after 31/8/1997 are void, the only alternative is to declare the trial and conviction is void and to send back the records to proper Magistrate having jurisdiction to try the offences. Registry is directed to forward the entire records of respective case to respective Chief Judicial Magistrate for transferring the records to proper Magistrate for trial of the cases.

10. As the appellants were convicted and sentenced by the Special Court for the Essential Commodities Act cases after 31.8.97 and that court has no jurisdiction to try or convict them, the trial and resultant conviction and sentence can only be declared void. As the appellants were not tried for the offences charged, they have to be tried by the competent court.

11. In the result, the appeals are allowed. The trial of appellants and their conviction and sentence by the Special Judge for Essential Commodities Act are declared void. Registry to send the entire records in S.T. 16/95 to Chief Judicial Magistrate, Kasargod and the records in S.T. 8/95 to Chief Judicial Magistrate, Palakkad. The Chief Judicial Magistrates are directed to forward the respective records to the respective Judicial Magistrate of First Class for trial and disposal in accordance with law.