
(1993) 09 BOM CK 0005
In the Bombay High Court
Case No : Criminal Appeal No. 605 of 1987

Keshavji Meghaji Dediya

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 24-09-1993

Acts Referred:

Essential Commodities Act, 1955 — Section 7(1)

Citation : (1994) 3 BomCR 640

Hon'ble Judges : S.W. Puranik, J

Bench : Single Bench

Advocate : K.H. Parekh, for the Appellant; Bhojne, Assistant Public Prosecutor for State, for the Respondent

Judgement

S.W. Puranik, J.—Appellant stands convicted for the offence u/s 7(1)(a)(ii) of the Essential Commodities Act read with Clause 3(a) of the Maharashtra Scheduled Articles (Display and Marking of Prices) Order, 1966 and sentenced to suffer S.I. for three months and to pay a fine of Rs. 300, in default S.I. for three weeks. This order was passed by the Special Judge (E.C. Act), Thane on 17th June, 1987 in Special Criminal Case (E.C. Act) No. 7 of 1987. Mr. K.H. Parekh appears for the appellant, while Mr. Bhojne, A.P.P. appears for the respondent-State.

2. It was the case of the prosecution that the appellant-accused is the proprietor of a grocery shop styled as "Nemichand Kirana Stores" situated at Hazuri, Thane. On 14-9-1986, P.S.I. Patil P.W. 3 was patrolling the area along with his staff. He received information that no price boards were displayed at two shops one Jadhav Kriana Stores and the other Nemichand Kirana Stores. Upon this information, P.S.I. Patil called two panchas and visited the shop of the accused-appellant at 4.00p.m. The appellant was present in the shop. It was found that grocery articles and food grains were kept for sale in the shop. However no price board in respect of the same was displayed in the shop. The Investigating Officer carried out a panchanama Ex. 13. Head Constable Sonavane P.W. 1 who was accompanying P.S.I. Patil lodged his report Ex. 14 in the police station. On the

basis of that complaint, case was registered and investigation taken up by P.S.I. Patil himself. After the investigation, the charge-sheet was placed before the Court.

3. In his defence, the appellant admitted that he is the co-owner of the shop, but denied that at the relevant time he was present and that no price list of articles was displayed in the shop.

4. The learned trial Judge found that the prosecution has proved the charge beyond reasonable doubt and convicted him as stated above.

5. During the trial as well as in this appeal the main contention of the appellant-accused is that the prosecution has not established that the appellant was a dealer at the material time within the meaning of Clause 2 of the Order of 1966. Mr. Parekh, therefore, contended that if the prosecution failed to prove that the appellant was a dealer, then no offence under Clause 3(a) of the said Order of 1966 can be made out against the appellant.

6. Mr. Bhojne on the other hand contended that the evidence of the Investigating Officer and the panch was sufficient to establish that there were customers present in the shop, scheduled articles were also stocked and placed for sale in the said shop and as such a reasonable presumption can be drawn that the accused was carrying on business of storing for sale by retail of articles as defined in the Order of 1966. He, therefore, supported the impugned judgment.

7. There is not much dispute regarding the facts that on the day of the incident the Investigating Officer had visited the shop of the appellant, that he was present at the shop and that several articles were seen placed for sale in the shop. It is also not seriously disputed that the price list of the articles for sale was not displayed at the shop.

8. The short question that arises for determination in this appeal is therefore whether the appellant was a dealer within the meaning of Clause 2(b) of the Order of 1966? Clause 2(b) of the said Order defines the word "dealer" as follows :-

"2(b) Dealer means a person who carries on the business of selling by retail or storing for sale by retail any article, whether or not such business is carried on in addition to any other business; but does not include a hawker or a pedlar."

9. Mr. Parekh for the appellant contended that in order that a person should fall within the meaning of the word "dealer" as defined in the Order of 1966 it must be shown that he is a person who carries on the business as a regular continuous activity in the matter of sale by retail or storing for sale by retail any article. Mr. Parekh drew support from the judgment rendered by the Supreme Court and reported in Manipur Administration Vs. M. Nila Chandra Singh, . In the said judgment, the Apex Court was concerned with the interpretation of the word "dealer" as defined in Clause 2(b) of the Manipur Foodgrains Dealers Licencing Order, 1958. The definition of "dealer" in that Order is referred to in paragraph 5

which says :

"Clause 2(b) defines a dealer as meaning a person engaged in the business of purchase, sale or storage for sale of any one or more of the foodgrains in quantity of one hundred mounds or more at any one time."

In the present case before this Court the necessity of any minimum fixed quantity is not there. The definition from Order of 1966 is already extracted above. The definition in the judgment rendered by the Supreme Court and the definition of "dealer" in Order of 1966 is identical and para materia to the extent that it means a person who carries on the business of selling by retail or storing for sale any article. The Supreme Court has laid emphasis on the words carrying on business. It is observed that apart from stocking, purchasing or selling articles by retail it is essential that such person should be carrying on said business as a continuous activity so as to make that person a "dealer" within the meaning of Clause 2(b). Thus merely establishing that a person was found sitting in a shop where articles of grocery were kept for sale would not by itself establish the fact that the said person was carrying on business of sale of articles by retail as a continuous activity.

10. As already stated above in the present case the evidence is very limited. The complainant Head Constable Vasant Sonavane P.W. 1 has merely stated that the accused is proprietor and was present in the shop and grocery articles were found kept for sale in the shop. P.S.I. Patil drew a panchanama of the shop. He admits in cross-examination that he did not check in whose name the licence of the shop stood. He has also not specified in his complaint which essential commodities were kept for sale in the shop. He specifically admits that nobody except the accused was present in the shop. Thus this evidence only goes to show that in a grocery shop appellant was present and articles were kept for sale.

11. P.W. 2 is Balekhan Pathan who acted as a panch at the time of the raid. The relevant part of his evidence is to the effect that rice, sugar and other Kirana articles were found in the shop. No price board was displayed. The accused informed that he is the owner of the shop. The police then made panchanama of the shop.

12. Lastly is P.S.I. Patil P.W. 3 who also states that the owner of the shop was present. Accused is the same shop-keeper. He, therefore, asked the accused and the accused said that he had not displayed any such board. In his cross-examination he has admitted that he has not recorded statement of any person residing in the locality. He has not collected any evidence to show that the shop in question was standing in the name of the accused. He did not seize the licence of the shop under the Shops and Establishment Act.

13. In the light of the judgment of the Supreme Court referred to above, the prosecution is required to prove that a person is continuously engaged in the activity of storing and sale by retail any articles specified in Schedule I of the order so as to include him within the definition of "dealer" under Clause 2(b) of

the Order. The judgment of the Supreme Court has been followed by our High Court in *The State Vs. Munafkha Lukmankha Pathan*, , *State Vs. Vithal Hair Nikate*, *State Vs. Vithal Hair Nikate*, and is squarely followed by the Division Bench of the Calcutta High Court in the matter of *Shew Ranjan Prosad Shaw Vs. The state*, .

14. Clause 3(a) of the Order of 1966 stipulates that every dealer shall in respect of the articles specified in Schedule I, display and keep displayed conspicuously during the hours of business and at a place as near to the entrance of his business premises as possible, a list of prices in the form prescribed in the Schedule. The appellant has been convicted for breach of this clause by the trial Court *inter alia* holding that he was a dealer and that he has failed to display a list of articles specified in Schedule I.

15. In view of the above discussion it is quite apparent that the prosecution has failed to establish that the appellant was carrying on activity of storage and sale by retail of articles as a continuous activity so as to be called a "dealer" within the meaning of Clause 2(b) of the Order of 1966 and if he is not established to be a dealer, the provisions of Clause 3 will not be applicable to his case. This being the position, the appellant's conviction and sentence are liable to be set aside.

16. In the result, therefore, the appeal succeeds. The conviction and sentence recorded against the appellant are quashed. He is acquitted of the offences for which he was charged. His bail bonds shall stand discharged. Fine, if paid, be refunded.