

(1999) 09 BOM CK 0050

In the Bombay High Court

Case No : Criminal Writ Petition No. 1326, 1327 and 1328 of 1992

Krishna Dattatraya Patil and Others

APPELLANT

Vs

Tukaram Sidu Nalawade and Others

RESPONDENT

Date of Decision : 28-09-1999

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 200, 482
Essential Commodities Act, 1955 — Section 10, 3, 5, 7

Citation : (2000) 5 BomCR 535 : (2000) BomCR(Cri) 535

Hon'ble Judges : S.S. Parkar, J

Bench : Single Bench

Advocate : R.V. More, for the Appellant; S.G. Page and R.P. Sabarwal, Assistant Public Prosecutor, for the Respondent

Judgement

S.S. Parkar, J.—These three petitions are based on common set of facts and raise common question of law and, therefore, are being disposed of together by this judgment.

2. These petitions are filed for quashing the complaints and the charge-sheet filed in the Special Court, Sangli under the provisions of the Essential Commodities Act. Petitioners are sought to be prosecuted u/s 7 of the Essential Commodities Act and for contravening the order made u/s 3 of the Act on the allegation of the contravention of the order passed by the Government of Maharashtra being Maharashtra Sugar Factories (Reservation of Area of Regulation of Crushing for Sugarcane Supply) Order, 1984. Under the said order about 150 villages had been reserved for the respondent No. 2-Karkhana who had obtained a licence from the Commissioner of Sugar, Maharashtra State, Pune. By virtue of the said order, respondent No. 2 Karkhana was entitled to harvest sugarcane of members as well as non-members sown in the area of those 150 villages which could not be harvested by any other factory without express permit obtained in that behalf. It was alleged in the complaint filed on 19-11-1991 that though the agricultural land of one Shri Kumar Bhopal Wadkar

comes in the reserved area of the respondent No. 2, the sugarcane standing in his land was illegally transported to Hutatma Kisan Aher Sahakari Sakhar Karkhana Ltd., Sangli of which the accused petitioner No. 1 is the Managing Director and petitioner No. 2 is Agricultural Officer. The complaint gives the particulars of the tractor and the trailers which were used for the illegal transportation of the sugarcane to the petitioner's Karkhana. It is further alleged in the complaint that the petitioners, who are the Managing Director and the Agricultural Officer of the said Karkhana, were responsible for transporting the sugarcane to their Karkhana illegally and thus were liable to be prosecuted u/s 7 of the Essential Commodities Act.

3. Section 7 of the Essential Commodities Act makes punishable the contravention of any order made u/s 3 of the Act. The Government of India had passed an order called Sugarcane (Control) Order, 1966 under the provisions of the Essential Commodities Act. Pursuant to the authorisation given by the Central Government under the above Order of 1966, the Government of Maharashtra had issued the aforesaid Order of 1984. Though the Government of Maharashtra has passed the order in the year 1984, by an amendment made to the said Order by Notification issued by the Government of Maharashtra on 14-1-1988 Clause 14 was inserted in the Order of 1984 under the heading penalty which provides as follows:

"14. Penalty :-Any person who contravenes any of the provisions of this Order or of the terms and conditions of a licence, permission or permit granted under this Order shall be punishable u/s 7 of the Essential Commodities Act, 1955."

4. The above Clause expressly makes the provisions of section 7 of the Essential Commodities Act applicable to the contravention of any of the provisions of the Order of 1984 or of the terms and conditions of the licence, permission or permit granted under the said Order. The contravention which is alleged to have been made by the petitioners-accused is in respect of Clause (3) sub-clause (1) and sub-clause (2) of the Order of 1984 which reads as follows;

"3. Reservation of Areas:---(1) having regard to the crushing capacity of sugar factories and the yield of sugarcane in the reserved areas and the need of production of sugar, areas as specified in each of the Schedules is hereby reserved for the factory mentioned in that Schedule with a view to enabling it to purchase quantity of sugarcane required by it. (2) Subject to the provisions of Clauses (4) and (5) of this Order, no sugar factory shall purchase cane or accept supplies of cane from cane growers, except from the area reserved for that factory."

5. Reading of the aforesaid Clause 3 of the Order of 1984 and Clause 14 of the said order with section 7 of the Essential Commodities Act and the allegations made in the complaint, in any opinion, make out a prima facie case to prosecute the petitioners.

6. Mr. More appearing for the petitioners-accused, however, contended that the

Order of 1984 issued by the Maharashtra Government not having been made under the provisions of the Essential Commodities Act, the petitioners are not liable to be prosecuted for the offence u/s 7 of the Essential Commodities Act. In support of his contention he relies on the unreported judgment of this Court (Coram: Chandrashekhara Das, J.) delivered in Criminal Writ Petition No. 983 of 1991 and Criminal Writ Petition No. 1113 of 1993 decided on 13th October, 1998. In those petitions also the prosecution u/s 7 of the Essential Commodities Act was challenged on identical facts except that the offences were alleged to have been committed in those cases in January, 1986 i.e. before the Amendment of 1988 whereby Clause 14 quoted above was inserted in the Order of 1984. While allowing those petitions for quashing similar prosecutions the learned Judge had held that the 1984 Order not having been issued under the provisions of the Essential Commodities Act but only under the Sugarcane (Control) Order of 1966 issued by the Government of India, the prosecution u/s 7 of the Essential Commodities Act were not maintainable as those prosecutions pertained to the offences allegedly committed before the date of Amendment of 1988 i.e. in the year 1986 and consequently the complaints were quashed. The ratio of that decision cannot be applicable to the instant petitions in which the offences are alleged to be committed in the year 1991 i.e. much after the amendment of 1984 Order whereby penalty Clause 14 was inserted on 14-1-1988 making section 7 of the Act applicable.

7. Mr. More then lastly contended that the petitioners cannot be prosecuted without the Sakhar Karkhana being arraigned as party accused. This contention of Mr. More also is without substance. Section 7 of the Essential Commodities Act which prescribes penalties speaks about "any person" contravening the order made u/s 3 of the Act. Secondly, the punishment prescribed is imprisonment for a term of years which cannot be applicable to the Karkhana as the term of imprisonment is made compulsory along with the fine. Secondly allegations made in the complaint are that the petitioners were responsible for transporting the sugarcane to the Karkhana of which the petitioners were office bearers, thus the act of contravention was allegedly committed by the petitioners. Reliance on section 10 of the Essential Commodities Act relating to offences by companies, by Mr. More cannot be of any assistance to him. Even if it is assumed that the offence was committed by the Sakhar Karkhana, every person who at the time the contravention was committed was in charge of and was responsible to the company for the conduct of the business of the company along with the company is deemed to be guilty of the said contravention and liable to be proceeded against and punished accordingly. Petitioner No. 1 in all the petitions being the Managing Director and petitioner No. 2 being the Agricultural Officer of the said Karkhana are the persons who can be said to be in charge of and were responsible for the conduct of the business of the company or the sugar factory and, therefore, in my view, they are liable to be prosecuted for the alleged offence.

8. For the aforesaid reasons, I find no substance in these petitions and they are,

therefore, liable to be dismissed.

9. in the result all the above petitions are dismissed and rule in all the petitions is discharged. Interim relief granted at the time of admission of these petitions on 22-10-1992 shall stand vacated.

10. On the request of Mr. Page, in view of the passage of time due to the stay granted by this Court, the trials in all the cases, which are the subject matter of these petitions, are expedited. Writs in all the petitions are expedited. On the request of Mr. Page issue of certified copy of this judgment is expedited.

11. Petition dismissed.