
(1991) 04 BOM CK 0067
In the Bombay High Court
Case No : Criminal Appeal No. 624 of 1983

Laxman Gulunjkar

APPELLANT

Vs

State of Maharashtra

RESPONDENT

Date of Decision : 09-04-1991

Acts Referred:

Essential Commodities Act, 1955 — Section 17, 3, 7

Citation : (1991) 2 BomCR 178 : (1991) 93 BOMLR 861 : (1991) 1 MhLj 943

Hon'ble Judges : M.F. Saldanha, J

Bench : Single Bench

Advocate : K.M. Dhakephalkar, for the Appellant; R.F. Lambay, Additional Public Prosecutor, for the Respondent

Judgement

M.F. Saldanha, J.—The appellant in this case was charged with having committed an offence punishable u/s 7 read with section 3 of the Essential Commodities Act, 1955. It was alleged that the appellant was the proprietor of Anandnath Provision Stores at 789, Budhwar Peth, Pune and that he is alleged to have sold kerosene at a rate higher than the prescribed one. It is the prosecution case that on 2-3-1983, a customer was sent to the shop, that he purchased a litre of kerosene and that the accused charged him Rs. 4/- per litre instead of the controlled price of Rs.1-77 ps. per litre. The learned Special Judge, Pune, convicted the accused for the offence with which he was charged and sentenced him to suffer rigorous imprisonment for one month and to pay a fine of Rs. 1,000/-, in default, to suffer rigorous imprisonment for two months. It is against this order of conviction that the present appeal has been filed.

2. Mr. Dhakephalkar, learned Counsel appearing on behalf of the appellant accused, has attacked the validity of the conviction on a pure point of law on which, to my mind, he is entitled to succeed. Mr. Dhakephalkar has stated that without going into the facts of the case, this Court will have to take note of one unusual feature that was prevalent, namely, the fact that even though the appellant originally possessed the licence to store and sell kerosene in retail that

the licence in question was valid only upto 31-12-1982. The appellant had applied for renewal of the licence one day before, namely, on 30-12-1982, but for some reason or the other, the renewal had not been granted. On 2-3-1983, i.e., the date of the incident, the renewal had still not been granted, which meant that the appellant did not possess any valid licence either to store or to sell kerosene. Mr. Dhakephalkar has pointed out that realising the impossible situation in which it was placed that the prosecution at a subsequent stage sought to make an endorsement to the effect that the licence has been renewed upto the year 1985 and that this licence was produced in Court. He pointed out that there can be no retrospective application to the renewal of a licence and that under these circumstances, the Court will have to proceed on the footing that there was no valid licence in operation on the date of the incident. The natural consequence of this, according to Mr. Dhakephalkar is that no charge in respect of breach of the terms of the licence can either be framed and least of all can the prosecution contend that such a charge, even if wrongly framed, is sustainable.

3. In support of his submissions Mr. Dhakephalkar has relied on the definition of the term "renewal" as it obtains in Venkataramaiah's Law Lexicon & Legal Maxims, 2nd Edition, Volume III, Page 2067. The learned Author has stated that a renewal must ordinarily be deemed to be fresh grant and that it cannot be said that cases of renewal were not within the purview of the Legislature as the case of expiry of a licence was specifically mentioned in section 164. Besides if the case of non-renewal is to be treated as cancellation then every licence for the limited period permitted by rules framed u/s 17(a) would, in fact, become a life licence. Mr. Dhakephalkar has also drawn support from reference to the renewal of a lease in relation to which the learned Author has relied on a decision of the Supreme Court in the case of Delhi Development Authority Vs. Durga Chand Kaushish, , wherein the Supreme Court has in unequivocal terms held that a renewal of a lease is really the grant of a fresh lease. It is called a renewal simply because it postulates the existence of a prior lease which generally provides for renewals as of right. In all other respects, it is really a fresh lease. Thus, the initial term a lease of ninety years could not co-exist with the renewals of that very lease within ninety years. On the basis of these authorities, Mr. Dhakephalkar submitted that the application for renewal of a licence cannot confer a revival of the licence that had expired on 31-12-1982 until the point of time when it was actually renewed. Since the offence has taken place during the interim period, Mr. Dhakephalkar submitted that there can be no question of sustaining the present charge on a point of law. Mr. Dhakephalkar has also relied on a decision of the Patna High Court in the case of Ram Chaitar Sao Vs. State, . The Patna High Court, while dealing with a case under the Essential Supplies (Temporary Powers) Act, 1946, which related to the breach of a condition of a licence under the Bihar Cotton Cloth and Yarn (Control) Order, 1948, held that in the absence of a licence, conviction for dealing without a licence was not legal. In sum and substance, the contention advanced by learned Counsel is to the effect that this being a criminal trial, the prosecution case is strictly circumscribed

within the four corners of the charge that was framed and the conviction therefore, which emanates from that charge, will have to stand or fall on the basis of that charge alone.

4. Mr. Lambay, the learned Additional Public Prosecutor, has pointed out that in the present case, the learned Special Judge has observed that there was a scarcity of kerosene in Pune City at the relevant time and the accused was virtually making money by selling the essential commodity at a higher rate. He submitted that in these circumstances, the accused ought not to be allowed to get away on the basis of super-technicalities. It is his contention that the accused had not allowed the licence to lapse, nor had the authorities cancelled it. Admittedly, the accused had applied for renewal of the licence and he continued to deal in the commodity on the basis of the assumption that the renewal in question would be granted. It may be for procedural rituals or due to any lapse in the office, according to Mr. Lambay, that there was some delay in the renewal being granted, but since it has come on record that the licence was ultimately renewed this Court must proceed on the footing that the licence was alive on the date of the offence and it is not, as submitted by Mr. Dhakephalkar, that there was no licence in existence on that date.

5. Unfortunately, it will not be permissible on strict construction of the legal position to accept the arguments advanced by the learned Additional Public Prosecutor for the reason that there is no automatic renewal of a licence, nor is there a deemed licence. It is entirely within the power and discretion of the licensing authority to either renew a licence or to refuse it. Under these circumstances, if the authority were serious about taking steps against the accused in this case, they ought to have been careful about the manner in which they proceeded and that they ought to have also ensured that the right facts were placed before the learned Special Judge and that the requisite charge for dealing in an essential commodity without a requisite licence was framed against the accused. In the case before the Patna High Court that has been referred to above, it is material to point that the Patna High Court took the view that even such a charge may not survive on technicality because a contradiction would arise in so far as where a person is charged essentially with the breach of the conditions of a licence, it would be an absurdity to also charge him for doing business without a licence. That issue, however, is academic as far as the present appeal is concerned.

6. In this view of the matter, the appeal succeeds. The conviction and sentence recorded against the appellant are set aside. The fine, if paid, is directed to be refunded. The bail bond of the appellant to stand cancelled. The appeal is accordingly allowed.