
(1969) 09 KL CK 0004
In the High Court Of Kerala

Mathen Joseph

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 19-09-1969

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (1971) CriLJ 117

Hon'ble Judges : K. Sadasivan, J

Bench : Single Bench

Judgement

K. Sadasivan, J.—The accused Mathen Joseph, has been convicted by the District Magistrate, Alleppey u/s 7(1) of the Essential Commodities Act (shortly stated the Act) read with Clause 3 of the Kerala Rice and Paddy (Procurement by Levy) Order, 1966 (shortly stated the Order) and sentenced to undergo R. I. for 2 months and to pay a fine of Rs. 500/.. The conviction and sentence have been confirmed in appeal by the Sessions Judge, Alleppey.

2. The prosecution case is that the accused failed to measure the required quantity of paddy as per notice issued to him. According to the prosecution, two notices were issued and they are Exs. P5 and P6 in the case. Under Ex. P5 dated 2.3-67 the accused was called upon to measure 13 quintals and 17 kilograms of paddy from the paddy field comprised in S. No. 910/3 of Alleppey village and under Ex. P6 dated 16-2.67 he was required to measure 59 quintals and 5 kilograms of paddy from the property comprised in S. No. 411/1 of Aryad South Village. The prosecution claims to have served Ex. P5 by affixture and Ex, P6 personally. The charge was denied by the accused. According to him, no notices were served on him and he has not cultivated any of the paddy fields as alleged by the prosecution. The notices are invalid in law. The Courts below repelling these contentions have entered the conviction.

3. On a consideration of the evidence in the ease, I am not satisfied that the conviction has rightly been entered. The Courts below, it is regrettable to observe, have gone at a tangent and based their conclusions on irrelevant or

inadmissible items of evidence. For instance, the conviction is based among other items of evidence, on Exs. P8 and P9 the so called A form statements alleged to have been furnished by a pumping contractor. In this document the cultivator is shown as "Mathen Joseph" the present accused. But the contractor who is said to have produced these documents to the Punja Special Officer has not been examined and there is no knowing on what data he happened to describe in these documents the accused as the person who was cultivating the field. One Kunoheria is stated to be the pumping contractor and it is alleged that these A-forms were filed by him before the Punja Special Officer; but the Punja Special Officer when examined aa Pw. 12, stated in clear terms that he did not know - who had produced Exs. P8 and P9 in his office.

Exs. P8 and P9 * * *

How could the accused who had no part to play in the preparation or filing of Exs. P8 and P9 be mulcted with liability basing on those documents? It is surprising that the learned appellate Judge has accepted and acted on these documents saying that they are documents "maintained in the regular course of official business." Maintained by whom and in the course of whose official business? The learned trial Magistrate it is important to remember in this connection, had rejected these documents and declined to act upon them. The trial Court's observation regarding these documents is as follows:

The person who has submitted Exs. P3 and P9 is not examined in this case. It is not known as to how he happened to include the name of Mathen Joseph in Exs. P8 and P9 aa the cultivator. Further in Exs. P8 and P9 the address of this Mathen Joseph is also not Bnown. As such Exa. P8 and P9 do not help us to say that the accused was cultivating the respective paddy fields.

So saying the two document were discarded by the learned Magistrate and it is basing on these discarded item of evidence that the learned appellate Judge has confirmed the conviction of the accused.

4. There is no evidence worth the name to show that the accused was in actual cultivation of the plot in question. None of the neighbours oited for the prosecution has sup. ported the case of the prosecution that the accused was in charge of the cultivation Some reliance is seen placed by the Courts below on the evidene of Pws. 3 and 4 - the former share holder and the latter the managing Director of Saoharia & Sons who are the proprietors of the "padasekarara" to which the alleged plot also belongs. The levy must be measured under normal circumstances by this company and to shirk that liability, it is easy for them to come and swear that the accused or somebody else is in actual cultivation and the levy is to be measured by them. Unless the prosecution is able to prove by positive evidence that the plot in question was, during ".", the relevant period, under the cultivation of the accused he cannot be convicted under the Act or the Order, Notices Exs. P-5 and P. 6 are themselves not valid, because they were issued under the Order, 1965 while the Order in force at the time was the Order,

1966. How could in 1966 the party be called upon to measure paddy under an Order which was in force in 1965. The rate at which paddy is to be measured is different in the two years and in any event when the 1965 Order was not in force at the time the notice was issued no liability can be fastened on the accused for its violation even if notices were in fact served (the finding is that Ex. P-6 alone was served). The learned appellate Judge has observed :

It is possible that the year 1965 was entered in the notices by a clerical or printer's mistake.

This is nobody's case. The persons responsible for issuing Exs. P-5 and P-6, have no case that the year was entered in the notices by mistake. In respect of the service of notices also the learned Judge has strained herself very much to support the finding that Ex. P-6 was served on the accused. The service of Ex. P-6 on him was denied by him. The learned Judge it appears has made a comparison of the signatures in Ex. P-6 with the admitted signature in certain documents filed by the accused and found that the signature in Ex. P-6 was his. The learned Judge observes:

Even though the accused denied having signed in Ex. P-6, on a comparison of the signature with the admitted signature in the documents filed by the accused in the Court there cannot be any doubt that the signature in Ex. P-6 was put by the accused.

Thus the comparison of signatures has also played its part in entering the conviction. In the first place the Court cannot arrogate the functions of an expert; secondly, when the conviction is based on a comparison of signatures, that fact should be put to the accused and his explanation got before the conclusion drawn from the signatures is made the basis for convicting him. Such a step is not seen taken in the case. It is also significant that the date of service is not shown in Ex. P-6. The date is important, because under the Rules the paddy is to be measured within 7 days from the date of service of notice. So, infixing the liability upon the accused the date of service of notice has a part to play. But in respect of that, the learned Judge would say that the accused had purposely omitted to put the date and she would blame the accused for having made such an omission. The learned Judge observes :

Neither did he make an endorsement of the date of service in Ex. P-6. The accused is now taking advantage of this omission.

I do not see any impropriety on the part of the accused in taking advantage of the omission. It is the duty of the serving officer to serve the notice properly and see that the date is also put. That having not been done, it is not fair on the part of the Court to blame the accused for exploiting that position to his advantage.

5. Above all is the final contention put forward on behalf of the accused that even if he is found to be the person who raised the crops he cannot be called a cultivator in the strict sense of the term, because the criterion is whether he had

the right or power to dispose of the paddy. A Full Bench of the Court in State of Kerala v. Annam 1968 Ker L T 390 =(A.I.R. 18G9 Ker 38) (FB) has held :

An imposter or even a trespasser who has raised and harvested a crop of paddy unlawfully may be a "cultivator" within the meaning of the Levy Order; and that will be so even if a suit is pending for his eviction. The person who directs the agricultural operations on a piece of land and takes the yield on harvest, with a right or power to dispose it, is the person who actually cultivates the land.

In the present case the prosecution has not succeeded in showing that the accused had the right or power to dispose of the paddy or had any sort of control over the paddy, even granting that the cultivation was raised by him. On all these grounds the conclusion to be arrived at is that no case was proved against the accused. His conviction and sentence must, therefore, go.

6. In the result, the conviction and sentence passed on the accused are set aside, and he is acquitted. Fine, if realised, will be refunded. The revision petition is allowed.