(1996) 03 MAD CK 0008

In the Madras High Court

Case No : Ctrl. Appeal No. 452 of 1988 and Criminal RC. No. 463/88.

Muthusamy and Another APPELLANT

Vs

Inspector of Police CBCID, Aruppukottai and Another RESPONDENT

Date of Decision : 09-03-1996

Acts Referred:
Penal Code, 1860 (IPC) — Section 192, 21

Citation : (1996) 2 LW(Cri) 695

Hon'ble Judges : Rengasamy, J

Bench : Single Bench

Advocate : S. Muthuramalingam, for the Appellant; N. Maninarayan, for the Respondent

Judgement

Rengasamy, J.—The Appellant and the revision Petitioner stand convicted by the Special Judge, under the Essential Commodities Act,

Pudukkottai, in S.T.C. No. 6 of 1988 to undergo rigorous imprisonment for three months and also to pay a fine of Rs. 300/- each for the offences

under $.6(2) of the Tamil Nadu Schedule Commodities (Regulation of Distribution by Card System) Order read with Section 7(l)(A)(ii) of the

Essential Commodities Act and Section 10(2) of the same Act. Both the Appellant and the revision Petitioners were together prosecuted for the

above said offences for certain irregularities committed by them when they were working in Paralachi fair price shop attached to Melaiyur village of

Aruppukkottai Taluk in Kamarajar District.

2. The Appellant in C.A. No. 452 of 1988 was the Secretary of the said fair price shop and the revision Petitioner in Crl.R.C. No. 463 of 1988

was a salesman. Allegations were received about certain irregularities committed in the distribution of the commodities in this fair price shop.

Therefore, the Co-operative Joint Registrar was deputed for the inspection of this fair price shop and on inspection, he found that the scheduled

commodities were supplied to non-card holders and false receipts were prepared as though the commodities were supplied to the card holders.

Ex. P.7 is the report of the Joint Registrar. P.W.I found that the bills were prepared dating 27.6.1987 as though the sugar was supplied on the

family cards 310209, 310221, 310148, 310218 and 310225 belonging to PW2 to PW4 but on actual verification, no entries were made in those

ration cards for the supply of sugar on, 27.6.1987 and further, he also found the sale of the rice at Rs. 2.40 per kilo though the fixed price was

only Rs. 1.75. Hence, on die report of the Joint Registrar, the Co-operative Deputy Registrar, Aruppukkottai, lodged a complaint with the Civil

Supplies C.I.D. Unit. P.W.5, the Inspector of Police, CS.C.I.D. registered the complaint of P.W.I in Crime No. 55 of 1987 under Sections 6(2)

and 6(3) of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order and also under, Section 7(1)(A)(ii) of the

Essential Commodities Act. He examined the witnesses and filed the Chargesheet.

3. Five witnesses were examined on the prosecution side and after the examination of the witnesses, the accused were questioned to explain the

incriminating circumstances found against them in the evidence. The Appellant and the revision Petitioner denied their complicity in the crime. The

learned Special Judge, Essential Commodities Act, Pudukkottai, has found that the offence against the Appellant and the revision Petitioner are

proved u/s 6(2) of the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order read with Section 10(2) of the

Essential Commodities (Regulation of Distribution by Card System) Order read with Section 10(2) of the Essential Commodities Act and

therefore, he found them guilty u/s 7(1)(A) (ii) of the Essential Commodities Act and imposed the sentence mentioned. Aggrieved of this

conviction, the Appellant and the revision Petitioner have filed the appeal and the revision respectively. As both these matters arise from the single

judgment, it is proper to pass a common judgment in these matters.

4. The learned Counsel Mr. U. Thiagarajan, appearing for the revision Petitioner, would contend that though the revision Petitioner, who was the

salesman in the fair price shop was prosecuted for the violation of Sections 6(2) and 6(3) of the Tamil Nadu Scheduled Commodities (Regulation

of Distribution by Card System), Order, he has been found guilty only for the alleged irregularity u/s 6(2) of the said Order without any basis or

evidence and according to the learned Counsel though P.W.I in his evidence has stated that false bills dated 27.6.1987 were prepared for the

supply of sugar to the cards 310209, 310221, 310148, 310218 and 310225, the card-holders P. Ws.2 to 4 who were examined to prove the

prosecution case that the sugar was not supplied to them on 27.6.1987; they without supporting the Prosecution case, have stated in their evidence

that they received sugar for the month of June 1987 and when such evidence is available in the Court, the prosecution of this revision Petitioner for

the alleged creation of false records without supplying the commodities, is baseless and the learned Special Judge also, closing his eyes, has

convicted the accused for the violation of Section 6(2) of the order. The learned Counsel further argued that even though the prosecution projected

the case before the lower Court that on 27.6.1987, no sugar was supplied to the card holders mentioned above, the cards belonging to P. Ws.2 to

4 marked as Exs.P.1 to P.3 bear the entries for the supply of sugar on 27.6.1987 and this fact also was not taken note of by the learned Special

Judge and therefore, the conviction against these accused is not sustainable.

5. So far as the entries in the family cards Exs.P.1 to P.3 on 27.6.1987, it is a matter, which I want to deal with separately, a few lines below.

Therefore, 1 am considering the other evidence namely, the evidence of the witnesses P. Ws.2 to 4 who are treated as hostile by the prosecution.

6. P.W.I in his evidence has stated that he inspected the Paralachi fairprice shop, in which the revision Petitioner was working as salesman and he

found that though in the month of June 1987, only five quintals of sugar was supplied to the fair price shop, the bills prepared for the distribution of

sugar revealed the total distribution of the five quintals and 21 kgs., which were in excess of the quantity supplied to the fair price shops. It is the

prosecution case that though the counterfoils of the bills Ex.P.8 to P.11 revealed the supply of sugar to the cards Exs. P.8 to P.11 revealed the

supply of sugar to the cards Exs.P.1 to P.3, but actually, no entries were found in those cards for the supply of sugar in the month of June and

therefore, the counterfoils Exs.P.8 to P.11 were falsely created to suppress the supply the essential commodities to non cardholders. The argument

of the learned Counsel for the revision Petitioner is that when the cardholders P. Ws.2 to 4 themselves in their evidence would say that they

received the sugar for their cards Exs.P.1 to P.3 in the month of June 1987, the evidence of P.W.1 has no weight and from the positive evidence

of P. Ws.2 to 4, it has to be held that there is no evidence for the irregularity u/s 6(2) of the Tamil Nadu Scheduled Commodities (Regulation of

Distribution by Card System) Order and therefore, the conviction imposed by the Court below has to be set aside.

7. Now, I shall refer to the entries in Exs. P.l to P.5 cards on 27.6.1987, it is true that even though P.W.1 had deposed that there was no entry in

the ration cards Exs.P.1 to P.5 for the supply of sugar to these cardholders on 27.6.1987, now the learned Counsel points out to me that in these:

cards, for the month of June, a date ''27'' is written as a proof for the supply of sugar to these card holders on 27.6.1987. Really, it is a mystery for

the appearance of such an entry in these cards though, all along, it was not stated before the trial Court that such an entry existed in the ration

cards. I shall now refer to the specific evidence of P.W.I in this connection. P.W.I in his evidence has narrated that when he perused these family

cards, Exs.P.1 to P.5, he found no entries were found for the supply of sugar for the month of June 1987 and therefore in the relevant column for

the month of June, he drew a line in the blank space to indicate that no entry was made and he also had initialed the relevant pages for the perusal

of these cards. Now, I am able to see the line drawn by P.W.I as stated by him in his evidence, in these family cards Exs.P.1 to P.5, it was not

suggested to P.W.1 anywhere in the cross examination that entry was made in the month of June by mentioning the date ''27'' for the supply of

sugar on 27.6.1987. On the other hand, a specific suggestion was made to P.W.1 that the salesman, namely the revision Petitioner in Criminal

Revision Case No. 463/88 had made entry in pencil for the supply of sugar in the month of June but certain politicians, acting against him, had

erased those pencil entries now. Therefore, by such specific suggestion to P.W.1 in the cross examination, the second accused also had admitted

the fact that on the date when P.W.1 was cross examined the ration cards Exs. P.1 to P.5 had no entries in the month of June, for the supply of the sugar. This fact cannot be denied by anyone. But, now, before this Court, the learned Counsel for the revision Petitioner points out the entry of the

date ''27'' for the month of June 1987, over the line drawn by P.W.1. Therefore, there is no doubt about the writing of this entry by someone

interested subsequently. As the learned Special Judge also has perused this document to give his finding that no entry was made for the supply of

sugar in the month of June 1987, it is further clear that the tampering of this document should have been made subsequent to the disposal of this

case by the Special Judge. Therefore, in my view, these documents namely Exs.P.1 to P.5 have been tampered with only for misleading the

Appellate Court by fabricating these records. It is a daring act of tampering with the Court records by some unscrupulous elements, which have to

be dealt with according to law for which also I am going to give a separate direction. Now, coming to the evidence on record, we are able to see

that P.W.1, on the date of his inspection found that the cards Exs.P.1 to P.5 did not bear any entries for the supply of sugar in the month of June

1987 but, Exs. P.8 to P.11 counterfoils of the bills prove the preparation of bills as though sugar was supplied, to the cards Exs.P.1 to P.4.

Therefore, it was made clear to P.W.1 at that time, that without actually supplying the sugar to the card holders P. Ws.2 to 4, records were

created as though the sugar was supplied to them. The salesman namely, the revision Petitioner was examined by P.W.1 during the time of his

inspection and he has given the statement Ex.P.6, wherein he has specifically admitted that he had sold one quintal of the sugar supplied to the fair

price shop to one Ganapathy Naicker of Ranisethpuram village and to suppress this fact, he had prepared the bills without actually making entries

in the ration cards of the respective parties. Therefore apart from the absence of entries in the ration cards Exs.P.1 to P.5 for the supply of the

commodity, the salesman also in his statement Ex.P.6 has specifically admitted the malpractice which is a violation u/s 6(2) of the Tamil Nadu

Scheduled Commodities (Regulation of Distribution of Card System) Order. But the learned Counsel for the revision Petitioner would contend that

in the light of the evidence of P. Ws.2 to 4 the influence for the non-entry in the ration cards cannot be drawn adverse to the accused. P. Ws.2 to 4

have been treated as hostile and the evidence of P.W.5 Investigating Officer reveals that during the time of investigation, these witnesses supported the prosecution. Now, in the light of the admission of the Revision Petitioner in Crl.R.C. No. 463 of 1988, that he diverted the commodities by

preparing false bills without making any entry in the ration card coupled with the evidence of P.W. 1 that he actually verified the cards Exs.P.1 to

P.5, in which no entries were found for the supply of sugar in June 1987 they go a long way to accept the malpractice in the fair price shop. In the

light of the above circumstances, the evidence of the hostile witnesses P. Ws. 2 to 4 need not be given weight.

8. Learned Counsel for the revision Petitioners contended that the printed number in the ration cards Exs.P.1 to P.5 have been subsequently

altered and the new number is written in red ink but in the counterfoils of the bills, the printed number of the card is given and if at all the salesman

wanted to create false bills, he would have given only the correct number of the ration card and therefore, the truth has not come out. It is not the

case of the salesman that Exs.P.8 to P.11 counterfoils were not prepared by him. It is the evidence of P.W.I that these counterfoils were prepared

by the revision Petitioner. The fair price shop must be having the family card numbers relating to the persons, who are entitled to receive the

commodity in this Fair Price Shop. As the printed numbers in these cards have been subsequently altered, when printed sheet was pasted with new

number in 1987, the salesman while preparing the false bills might have simply written the original card numbers, probably for the reason that the

alteration of those numbers were not carried out in his register maintained in the fair price shop. Anyhow, the card numbers written in the false bills

Exs.P.8 to P.11 are found in the ration cards Exs.P.1 to P.5. Therefore, it is very clear that the salesman had intended to create these bills as

though he distributed sugar to the cards Exs.P.1 to P.5.

9. Another circumstance pointed out by the learned Counsel for the revision Petitioner is that in the ration cards Exs. P-l to P-5 for the year 1987,

a separate printed sheet is pasted indicating some tampering of the ration card itself and there is suspicion as to the truth of these ration cards. Exs.

P-l to P-5 ration cards were originally printed only for the years 1980 to 1986. Therefore, instead of furnishing a new card for the year 1987, a

printed sheet having the identical columns as found in the original card, where pasted to those cards probably to avoid the expenditure of printing the full ration card. The revision Petitioner, who was dealing with the ration cards, did not say either in the cross examination or at the time of his

statement under S313 Code of Criminal Procedure that the printed sheet for 1987 was not attached at the time when the cards were produced

before him while drawing the ration. As a matter of fact, in the new printed sheet, pasted in the original family card, a new number is given and this

number is written in die family card striking the old number. Anyhow, one thing is clear and that is, as the family cards Exs. P-l to P-5 were issued

for the years 1980-1986, for 1987 new cards should have been issued. In the counterfoils, Exs.P-8 to P-11 for die supply of sugar in the year

1987 only the ration card number for the year 1980-86 alone is mentioned. But in 1987, those numbers cannot exist as the period of that ration

card was over. Therefore, it is patent from these ration cards that for the year 1987, a printed sheet was annexed to each of these family cards and

the new number also is printed on these annexed sheets, which number is carried out in the front page of the family cards. Therefore, there is

nothing suspicious leading to any doubt as to the affixture of the printed sheet in the family card issued for 1980-86. Therefore, on a thorough

consideration of the evidence and also the circumstances, it is established that the revision Petitioner has committed the violation of Section 6(2) of

the Tamil Nadu Scheduled Commodities (Regulation of Distribution by Card System) Order for which the lower Court has rightly found him guilty.

10. Then coming to the Appellant in C.A. No. 452 of 1988, he was the first accused before the Lower Court. This Appellant was admittedly the

Secretary of the Thoppulathorai Co-operative Agriculture Society, which was running the fair price shop in Paralachi Village also. The Special

Officer, P.W.I, in his evidence, has stated that the first accused had the full control and supervision of the day to day transaction of the fair price

shops. This Appellant is made responsible for the malpractices in the above said fair price shop u/s 10(2) of the Essential Commodities Act

Section 10(2) reads:

10. Offences by Companies:

1. ....

2. Notwithstanding anything contained in Sub-section (1) where an offence under this Act has been committed by a Company and it is proved that

the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary

or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be

liable to be proceeded against and punished accordingly.

The learned Counsel appearing for this Appellant Mr. S. Muthuramalingam contended that the Appellant in his capacity as Secretary had to attend

his daily works in Thoppalathurai Cooperative Agricultural Society which had control over several fair price shops, that there is no evidence on the

prosecution side to hold that this Appellant had any connivance in the alleged malpractices and he was also not present at the time when P.W.I

inspected the fair price shop and therefore, this Appellant cannot be made liable for the alleged offences said to have been committed by the

second accused salesman. This argument holds no water because Section 10(2) of the Essential Commodities Act is a deeming provision rapping a

person who was negligent in the effective supervision over the company or the firm. If this Appellant had proper supervision over the fair price

shop, he could have easily deducted the malpractice committed by the second accused salesman by making false entries in the registers as though

he had supplied the commodities to the cardholders. Therefore, even if it is taken that there is no evidence for the connivance of them, Appellants

as P.W.1 was able to detect this malpractice which the Appellant also could have detected in proper time by checking the stocks, the registers and

cards. Hence, the negligence on the part of this Appellant falls within the ambit of Section 10(2) of the Essential Commodities Act, which he cannot

wriggle out. The learned Counsel for the Appellant contended that the fair price shop was run by the agriculture cooperative society, which cannot

be treated as a company as defined u/s 10 of the Essential Commodities Act and therefore, in this case Section 10(2) of the Essential Commodities

Act cannot be invoked. He also relied upon a decision of the Supreme Court in S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others,

wherein the Supreme Court has held that the Cooperative Society is not a Corporation within the meaning of Section 21 of the India Penal Code.

The learned Counsel further contended that this Court in Ramu In Re (1988 L.W. (Crl) 61) has held that the prosecution of the salesmen for violation of the order without prosecuting the authorised dealer is not valid and therefore, as the authorised dealer, namely the Cooperative

Society, is not made a accused in this case, the prosecution of the Secretary and the Salesman is against the law.

11. So far as the first argument is concerned, namely, the applicability of Section10, the authorised dealer is a Co-operative Society. The

Explanation to Section 10 of the Essential Commodities Act reads that ""a company"" means any Body Corporate and includes a firm or other

association of individuals A co-operative society is a Corporate Body run by its members, which can be otherwise termed as an association of

person. The decision in S.S. Dhanoa Vs. Municipal Corporation, Delhi and Others, is with reference to the term ''Corporation'' in relation to

Section 21 of Indian Penal Code. It has no bearing for the definition given under the Essential Commodities Act. On the other hand, this decision

defines the co-operative society as a Body created by an act of group of individuals in-accordance with the provisions of a statute. This is in line

with the definition given under the Essential Commodities Act for the word ''Company''. Therefore, the term ''Company'' as defined under the

Essential Commodities Act, is certainly applicable to the co-operative societies also.

12. The next argument regarding the non-prosecution of the authorised dealer, the view expressed in Ramu In Re 1988 LW. (Crl.) 61 has been

dissented in Krishnamoorthy v. State of Tamil Nadu (1991 L.W.(Crl.) 449) in view of the decision of the Apex Court in Sheoratan Agarwal and

Another Vs. State of Madhya Pradesh, wherein the Apex Court has observed that,

There is no statutory compulsion that the person in charge or any officer of the company may not be prosecuted unless he be arrayed alongside of

the company itself. Section 10 indicates the person who may be prosecuted when the contravention is made by the company. It does not lay down

any condition that the person in charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each

or any of them may be separately prosecuted or alone with the company. Section 10 lists the persons, who may be held guilty and punished when

it is a company that contravenes an order made u/s 3 of the Essential Commodities Act.

In view of this clear expression of the Apex Court, it is futile to argue on the part of the Appellant that without prosecuting the authorised dealer,

they shall not be prosecuted.

13. The learned Counsel referred to another decision in Pandi v. State 1990 L.W. (Crl.) 401 in which it is held that when the authorised dealer

was not found guilty and was acquitted of the charge, the salesmen cannot be convicted. In the case on hand, no one was acquitted, for the reason

that the authorised dealer was not prosecuted it cannot be taken that it was acquitted. In view of the decision of the Apex Court cited above, non-

prosecution of the authorised dealer will not affect the prosecution of others.

14. The learned Counsel Mr. S. Muthuramalingam contended that in the complaint sent by the Deputy Registrar, the name of the first accused is

not found and therefore the implication of the first accused is an afterthought. As mentioned above, it is not in dispute that the first accused was

working as a Secretary of the co-operative Society. The first accused also, in his statement would accept that. By virtue of his position, as a

Secretary of the Society, and applying Section 10(2) of the At, which is a deeming provision, he was arrayed as the first accused. Therefore, it

cannot be considered as an afterthought. Anyhow, as the malpractice has been established by the documents and the circumstances, which I have

referred to above, both the accused in this case are liable to be punished u/s 6(2) of the Tamil Nadu Scheduled Commodities (Regulation of

Distribution by Card System) Order. Therefore, the Court below has rightly found them guilty under the above said provisions read with Section

7(1)(A)(ii) of the Act. Considering the sentence imposed on these accused, only a minimum sentence is prescribed under the Act, namely, three

months rigorous imprisonment and the fine of Rs. 3,000/- is imposed on them. There is no possibility for modifying this sentence. Hence, the

appeal and the criminal revision case are liable to be dismissed.

15. Before parting with these matters, I am to say that I am pained to see that some unscrupulous elements are gaining access to the Court records

some how, for tampering with the same to suit their convenience. Such events cannot be lightly ignored as it may encourage the recurrences of such

acts. The real culprits, who had tampered with the records, with the hope of procuring false evidence before the Court, should be brought to book by proper investigation. Even though I am not sure as to the place where the documents were tampered with, it can be brought to light only during

the course of investigation. Therefore, the Registrar of this Court is directed to lodge a complaint with the Commissioner of Police, Madras, within

one week to deal with the offender, who has committed the offence u/s 192 Indian Penal Code.

16. Subject to the above direction, both the Criminal Appeal and the Criminal Revision Case are dismissed confirming the conviction and sentence

imposed by the Court below. In view of the G.O. Ms. No. 762 dated 20.7.1987, these economic offenders are not entitled to the remission of the

sentence.

