(1977) 09 OHC CK 0017

In the Orissa High Court

Case No : Criminal Revision No. 365 of 1976

Nabakishore Dash and Krushna Chandra Sahu APPELLANT

Vs

Republic of India RESPONDENT

Date of Decision : 22-09-1977

Acts Referred:

Import (Control) Order, 1955 — Section 5
Imports and Exports (Control) Act, 1947 — Section 3, 5, 7

Citation : (1977) 44 CLT 588

Hon'ble Judges : K.B. Panda, J

Bench : Single Bench

Advocate : P. Palit, J. Patnaik and R. Mohapatra, in Criminal Revision No. 365 of 1976 and N.C. Mohanty, in Criminal Revision No. 375 of 1976, for the Appellant; G. Bohidar, for the Respondent

Final Decision : Allowed

Judgement

K.B. Panda, J.—One Nabakishore Dash is Petitioner in Criminal Revision No. 365 of 1976 and one Krushna Chandra Sahu, is Petitioner in Criminal Revision No. 375 of 1976. Both were being tried for an offence u/s 5 of the Imports and Exports (Control) Act, 1947 on the allegation that they bad violated the conditions embodied in the Import licence (Ext. 1) dated 17-10-1967. Finally they were convicted thereunder each sentenced to one year''s rigorous imprisonment, besides payment of a fine of Rs. 500/- each, or in default to undergo R. I. for one month by the Courts below occasioning these revisions.

2. The facts are all admitted and may be briefly stated thus: Both the Petitioners are partners of a firm running under the name and style of "Jay Durga Metal industries", Balakati. The firm applied for import of zinc sheets. It had a licence (Ext. 1) which is substantially an import licence for zinc and other articles, named therein. The licence that was granted to the firm is named as him port Trade Control -Industry- Brass or bell-metal utensils, etc." The licence number is "P/SS/1575285/C/XX/25/C/C/ 23.24/N.F,", which is not disputed. The firm

received zinc slabs of 30 metric tones valuing Rs. 82,703.11 p. including customs duty. It converted the zinc slabs into zinc rods and sold those goods to M/s. C.D. Ghosh and Co., delivered at the factory site of that firm on four different dates at a price of Rs. 95.000/- and odd, as indicated in col. 8 of Ext. 11. The prosecution alleges that the firm could not have sold the zinc slabs by converting them into zinc rods but should have made materials of brass and bell-metal products or utensils and then would have been entitled to sell them. Thus by converting zinc slabs into zinc rods and by selling them, the firm has violated the conditions of the control order, and consequently liable u/s 5(i) of the Import (Control) Order, 1955 which runs thus:

5. Conditions of Licence -(1) The licensing authority issuing a licence under this order may issue the same subject to one or more of the conditions stated below:

(i) that the goods covered by the licence shall not be disposed of, except in the manner prescribed by the licensing authority, or otherwise dealt with, without the written permission of the licensing authority or any person duly authorised by it ;

xx xx xx xx xx

3. The defence is that the firm has in fact received the zinc slabs as alleged under the licence. But for manufacture of brass and bell-metal, tin is absolutely necessary. The firm applied for getting tin. But unfortunately, no such supply could be made by Government. Accordingly it was not in a position to manufacture brass or bell-metal utensils. The firm was running its business by borrowing money and therefore the interest accumulated. The firm intimated this fact to the licensing authority for supply of tin to enable the firm to manufacture bell-metal utensils. But yet, no supply was made. Besides in the licence it has been stipulated that the industry that a firm will carry on is industry of brass and bell-metal utensils etc.. It is the further case of the firm that this ''etc.'' means similar industry and since no tin was supplied even after applying for it, the firm was entitled to convert the zinc slabs by manufacturing process into zinc rods and thereafter selling them in the approved price which has been faithfully reflected in the accounts of the firm. In fact, the sale and the accounts maintained by the firm are not under dispute. The sole point for consideration is if by such conversion and sale of the zinc rods, the conditions of the licence have been violated.

The grievance of the Petitioners is that they supplied for getting tin but Government was not in a position to supply tin which is also admitted.

4. The prosecution examined 17 witnesses and the defence none. P.Ws. 1, 3, 4, 5, 6, 7, 8, 9, 10, 12, 13, 14, 15, and 16 depose to the facts which are admitted. The relevant witnesses are P.Ws. 2, 11 and 17. P.W. 2 in his cross-examination has admitted that for the purpose of manufacturing bell-metal utensils tin is absolutely necessary. P.W. 2 also admits that the Petitioners had applied for import of tin which could not be done. So is also the statement of P.W. 11. To corroborate the same, the documentary evidence in the case are Exts. 11 and

13. Columns 5 and 7 of Ext. 11 are material.

5. The facts being all admitted, the question for consideration is if by such sale, the firm has violated the terms of the licence. It was contended by Mr. Palit and Mr. Mohanty, learned Counsels for the Petitioners that (1) the term "etc." in the licence would also include conversion of zinc slabs into zinc rods through a manufacturing process and selling them as zinc rods; (2) tin being an indispensable ingredient in the process of manufacturing brass and bell-metal utensils, failure on the part of authorities for giving import licence for tin would absolve them of all responsibility ; and that (3) in the facts and circumstances of the case, the prosecution having failed to establish mens rea, the conviction is illegal and unwarranted.

6. I think, there is much substance in all these contentions advanced on behalf of the Petitioners. The first two contentions are based on facts which are admitted, so need not be discussed. The question whether there can be a conviction even if there is no mens rea in the instant case survives for consideration.

In that context reliance is placed on Nathulal Vs. State of Madhya Pradesh, . That was a case where the accused applied for a licence for storage of foodgrains. But before it was granted, he stored food grains for which he was prosecuted. Disposing of the case, their Lordships held thus:

That on the facts of the case the conviction of the accused should be set aside. The accused was under a bona fide impression that the licence in regard to which he had made an application was issued to him though not actually sent to him. It was under this impression that he had stored the grain. The fact that the licensing authority did not communicate to him the rejection of his application confirmed the accused''s belief. It was on that belief that he stored the foodgrains and was sending the relevant returns to the concerned authority. It was, therefore, a storage of foodgrains within the prescribed limits under a bona fide belief that he could legally do so. He could not, therefore, be said to have intentionally contravened the provisions of Section 7 of the Act or those of the Order made u/s 3 of the Act.

After this judgment, the Essential Commodities Act, 1955 (Act 10 of 1955) specifically excluded mens rea by an amendment brought to it. So the general law is that mens rea applies to all criminal cases unless its operation is by necessary implication or by specific provision excluded from the Act. In the instant case, nothing of that sort has been shown.

7. It was contended by Mr. Bohidar, the learned Counsel for the opposite party that the bell-metal utensils etc. would only mean bell-metal products and similar such products as could be included under the terms ejusdem generis. He in this connection, relied on an observation in Jage Ram and Others Vs. State of Haryana and Others, , which is thus:

It is observed in Oraies Statute Law (6th eldn.) P. 181 that:

The ejusdem generis rule is one to be applied with caution and not pushed too far, as in the case of many decisions, which treat it as automatically applicable, and not as being, what it is, a mere presumption, in the absence of other indications of the intention of the legislature. The modern tendency of the law, it was said, is "to attenuate the application of the rule of ejusdemg generis". To invoke the application of the ejusdem generis rule there must be a distinct genus or category. The specific words must apply not to different objects of a widely differing character but to something which can be called a class or kind of objects.

Here the licence speaks of brass or bell-metal utensils etc. What is included under the expression "etc." remain vague. Even P.W. 3, the Deputy Chief Controller, Imports and Exports could not explain as to what were the other goods which were included in that expression. From this it follows that there is no question of genus or species and if anybody under a bona fide belief that he is entitled to convert by manufacturing process zinc slabs into zinc rods and then sell those rods, at a reasonable price, I do not think he thereby commits breach of the conditions of the licence granted to him. At worst it will be a bona fide mistake for which he is protected and no criminality can be attached to his action.

8. In that view of the matter) I accept the criminal revisions and set aside the order of conviction and sentence passed on the Petitioners. The revisions are allowed. The Petitioners be released from their bail bonds. I understand that the fines imposed have not been paid.

Revisions allowed.