
(1969) 07 BOM CK 0010

In the Bombay High Court

Case No : Criminal Revision Application No's. 249 and 306 of 1969

Narayan Rama Sambrekar

APPELLANT

Vs

The State of Maharashtra

RESPONDENT

Date of Decision : 18-07-1969

Acts Referred:

Essential Commodities Act, 1955 — Section 1, 7

Citation : (1970) 72 BOMLR 154 : (1970) MhLj 283

Hon'ble Judges : Wagle, J

Bench : Single Bench

Final Decision : Allowed

Judgement

Wagle, J.—Since these two revision applications raise an exactly similar point, these two applications are being disposed of by one judgment although the incidents are different and the accused are also different.

Criminal R.A. No. 249 of 1969.

The prosecution case was that upon information received by P. 8. I. Dixit of Savantwadi that rice was being transported from Kolhapur District to Savantwadi, a truck MYD 4482 was stopped at the Octroi Naka within Savantwadi limits on September 9, 1967 at about 4 a.m. On a search being made, it was found that the truck contained 80 bags of rice. Those bags were attached after a panchnama thereof was made and the three persons in the truck- accused No. 1 who was the driver, accused No, 2 who was the cleaner and accused No. 3 who was sitting by the side of the driver-were put under arrest. The three accused were then charged u/s 7(i)(a)(ii) of the Essential Commodities Act, 1955, read with Clause 12 of the Maharashtra Scheduled Food-grains (Stock Declaration and Procurement and Disposal, Acquisition, Transport and Price Control) Order, 1966 (hereinafter referred to as "the said Order.") Clause 12 of the said Order on which the charge was framed reads as follows:

No person, other than a recognised dealer, shall transport, attempt to transport

or abet the transport of -

(a) rice from any village or any municipal or cantonment area in the State to any area in the State outside it, or vice versa,

(b) other foodgrains from any taluka in the State to any area in the State outside it, or vice versa

except under and in accordance with an authorisation granted by the Collector of the district within which or from which such transport is to take place, or by any officer authorised by such Collector:

There are certain provisos to this clause with which, however, we are not concerned. In the instant case neither of the three accused had any authorisation for removal of rice from any part of State to any other part of the State.

2. The defence of the accused was that the goods were loaded at Belgaum and they were being taken to Banda, a place in Savantwadi Taluka in the Ratnagiri District,

3. Evidence was led by the prosecution upon which the learned Magistrate came to the conclusion that the prosecution had proved the contravention of Clause 12 of the said order and held accused Nos. 1 and 2 guilty u/s 1(i)(a)(ii) of the Essential "Commodities Act. Accused No. 3 was acquitted. An appeal filed by the accused was dismissed.

4. Mr. Mandrekar appearing for the petitioners, original accused Nos. 1 and 2, contended that the petitioners had in fact not committed any offence. It was pointed out by Mr. Mandrekar that a finding was given by the learned appellate Judge as follows:

Therefore on the evidence as it stands the truck came from Belgaum loaded with rice and had entered the Ratnagiri District at Amboli after crossing the Kolhapur District. The Octroi Naka clerk at Amboli, Amdoskar (Ext). 33) corroborates the fact that this truck entered the Ratnagiri District on 9th September 1967 and he also states that the accused told him that they had come from Belgaum.

The fact, therefore, found was that the rice was loaded at Belgaum and it had entered Ratnagiri District on September 9, 1967. Mr. Mandrekar's contention was that for rice which was brought from outside the State, the provisions of el. 12 of the said Order would not apply. Clause 12, the relevant part of which I have quoted above, refers to "transport, attempt to transport or abet the transport" of rice or foodgrains. The word "transport" is defined in Clause 2(p) of the said Order. The definition is as follows-. " "transport" means movement from one place to another within the State". What was urged by Mr. Mandrekar was that unless there was transport or attempt to transport or abetment of transport, the provisions of Clause 12 would not operate. The definition of "transport" showed that two destinations had to be pointed out, one from which it started and the other at which it was to end and within the definition of Clause 2(p) of

the said Order, both these destinations had to be "within the State". Unless, therefore, those requirements were satisfied that the transport began from some place in the State and was to end at some other place in the State, the provisions of Clause 12 of the said Order would not apply to anything that was being removed.

5. In the instant case, Mr. Mandrekar pointed out that a fact was found by the learned Sessions Judge concurring with the finding given by the learned Magistrate that goods were coming from Belgaum to within Ratnagiri District. The rice, therefore, was not being" transported from one place within the State to another place within the State. Mr. Mandrekar then referred to a decision of this Court in Emperor Vs. Dagadu Shetiba, which dealt with the Bombay Abkari Act. While considering the point regarding transport from place "A" to place "B", the learned Chief Justice observed as follows (p. 1064):

...But merely passing through a place in the course of a journey does not in my judgment, amount to transporting to that place. In the present case, on the finding of the Magistrate, the accused was going to Poona, and was merely passing through Bombay. That being so, I think the Magistrate was right in acquitting the accused, and the appeal is dismissed.

What was urged by Mr. Mandrekar was that these observations are clear enough to indicate that places in transit cannot be considered either as the start of a transport or the end of a transport. If the rice had come in transit to a place in Kolhapur District and thereafter another place in Ratnagiri District, neither of these places could be considered either as places from where the transport begins or the places where the transport ends, Mr. Mandrekar's argument, therefore, based upon the interpretation of the expression "transport" was that the ingredients of Clause 12 of the said Order are not satisfied in the instant case. A clear finding is given that the transport began in Belgaum. The rest of the places were places in transit and the destination was certainly within a District in the State. But even if the destination was within the State itself, the transport not having begun from a place in the State, the ingredients of Clause 12 of the said Order are not satisfied by the prosecution. It must, therefore, be held that there was no contravention of Clause 12 of the said Food Grains Control Order by those persons who were transporting the goods in the instant case. The conviction, therefore, has necessarily to be set aside.

6. Upon the goods being attached, the same were sold and by the order of conviction, the sale proceeds of rice were forfeited to Government u/s 517 of the Criminal Procedure Code read with Section 7(i)(a)(ii) of the Essential Commodities Act, 1955. Since the accused are not proved to have committed an offence, the order of forfeiture must also be set aside and the State has to be directed to return to the accused the amount of sale proceeds recovered by it.

ORDER

7. Rule made absolute. The order of conviction of the accused Nos. 1 and 2 u/s

7(1)(a)(ii) of the Essential Commodities Act, 1955 read with Clause 12 of the Maharashtra Scheduled Foodgrains (Stock Declaration and Procurement and Disposal Acquisition, Transport and Price Control) Order, 1966, is set aside and the accused are acquitted. Their bail bonds are cancelled.

8. The order of forfeiture of the sale proceeds is also set aside and the State is directed to refund to accused No. 1 the sale price recovered by it.

9. Fine if paid is ordered to be refunded.

10. [The rest of the judgment is not material to this report.]