
(1959) 08 KL CK 0035
In the High Court Of Kerala

Paul

APPELLANT

Vs

State of Kerala

RESPONDENT

Date of Decision : 31-08-1959

Acts Referred:

Essential Supplies (Temporary Powers) Act, 1946 — Section 17, 7(2), 8

Citation : (1960) CriLJ 909

Hon'ble Judges : Vaidialingam, J

Bench : Single Bench

Judgement

Vaidialingam, J.—This is an application by the first accused in C. C. 20/1951 on the file of the First Class Magistrate, Trichur to revise the orders of both the subordinate courts rejecting an application filed by him for return to him of the value of the goods seized and confiscated in the original C. C. 20/1951. In C. C. 20/1951, the first accused, along with 5 others, was tried for offences Under Sections 7 (2), 8 and 17 of the Essential Supplies Temporary Powers Act ? Central Act XXIV/1946. The case for the prosecution then was that these accused were transporting, without permit on 13-11-1950 about 150 bags of dried tapioca chips from a place called Kanjirappilly in the erstwhile Cochin State to Pannimmed in Pollachi Taluk.

It is not necessary to go into the merits of that case, because there is no dispute that the present petitioner, who was the first accused and also accused 2 and 4 were convicted under the Sections mentioned earlier. It is also evident from the records that along with the conviction of these persons, the trial magistrate also ordered the 150 bag of tapioca to be sold and also further directed that the proceeds are to be confiscated to the State,

2. The first accused who is the petitioner before me, was found guilty of the offences with which he was charged and as such, sentenced to pay a fine of Rs. 200/-. This conviction was challenged by him before the learned Sessions Judge, Trichur, in Crl. Appeal 43/1953. The learned Sessions Judge who heard that appeal, set aside the order of conviction and acquitted the first accused, the

petitioner before me, on the ground;

As there is no reliable evidence to show that the tapioca belonged to the 1st accused or at least that the transport of tapioca was at the instance of the appellant, the conviction cannot be maintained.

Therefore, it will be seen from this reasoning of the learned Judge that the petitioner herein got) his conviction quashed and got an acquittal on the ground that the prosecution was not able to prove by reliable evidence that the tapioca which is the subject-matter of the occurrence belonged to the first accused. It is also clear that so far as the order of confiscation passed by the trial magistrate along with the conviction of the accused is concerned, that was not interfered with by the appellate court. The petitioner made an attempt to have the order of confiscation challenged by filing Crl. Appeal No. 3/1954 before the learned Sessions Judge, and the learned Sessions Judge, in my opinion, quite rightly dismissed that appeal on 30-1-1954 as not maintainable.

There was another attempt to get the order of confiscation either reviewed or set aside by the second accused, who was the driver, filing Crl. R. P. 1/54 before the learned Sessions Judge of Trichur. This again met with the same fate and it was dismissed on 25-6-1954 on the ground that the second accused is not a person aggrieved by the order of confiscation. It may be mentioned at this stage that in disposing of Crl. Appeal 3/1954, the learned Sessions Judge made certain observations in favour of the present petitioner which admittedly he has not cared or chosen to take advantage of up to now.

3. After all these, the present petitioner filed the application, out of which this Crl. Revision Petition arises, before the Special First Class Magistrate for paying over to him the amount realised by the confiscated tapioca articles. The learned Special First Class Magistrate, Trichur as also the learned Additional Sessions Judge, Trichur have rejected this application filed by the petitioner. It is against these orders that the present Crl. Revision Petition has been filed.

4. Mr. M. A. Joseph, learned Counsel for the petitioner, contended that the question of confiscation though was also a subject of appeal in Crl. Appeal 43/1953, has been evidently by inadvertence not dealt with by the court at that time. The fact that in Criminal Appeal 3/1954, the learned Judge gave certain directions and which have not been complied with by the petitioner up to now, cannot be put against his client, if he is really entitled to the relief that is asked for in these proceedings. Again the learned Counsel contended that the case of the prosecution has always been that the goods which were seized on 13-11-1950 belonged to the first accused and when once his conviction has been set aside, in law and justice, his client is entitled to get back the value of the goods which has been confiscated by the State.

5. The learned Counsel also relied upon two decisions of the Supreme Court reported in Pushkar Singh Vs. State of Madhya Bharat and Another, and Suleman Issa Vs. The State of Bombay, .

6. In my opinion, the petitioner is not entitled to any relief whatsoever and the orders passed by the First Class Magistrate and also by the learned Additional Sessions judge have to be confirmed. Whatever is the position taken up now to get back the value of the articles, on the ground that the first accused, petitioner before me is the owner, there is no dispute that the order of acquittal in his favour was passed mainly on the ground that there is no reliable evidence to show that the tapioca belonged to the first accused. Having got the benefit of an acquittal on the ground that the prosecution has not been able to satisfactorily establish that the first accused, namely, the petitioner before me and who now claims to be the owner of the goods, is the owner of these goods, it is not open to him now to go back and claim the goods as belonging to him.

The question of confiscation has already been considered by the trial court even when the original conviction of the petitioner was made. It was perfectly open to the petitioner to challenge both his conviction and also the order of confiscation made by the Magistrate, It is seen from the records that it is only the question of conviction that was agitated very seriously and the agitation, set far as the question of confiscation was concerned, though attempted both by the petitioner and the driver in different proceedings, has proved futile.

In my opinion, the decisions relied upon by the learned Counsel have no bearing at all on the point that I have to consider. In the decision in Pushkar Singh Vs. State of Madhya Bharat and Another, there was a clear finding by the courts that the currency notes which were alleged to be the subject of theft, were not the subject of theft, and in those circumstances, their Lordships of the Supreme Court held that the complainant was not entitled to get the currency notes as against the accused.

7. Again in Suleman Issa Vs. The State of Bombay, the question about the confiscation itself was being challenged and their Lordships stated that in view of the circumstances in that case that the appellant there, has been convicted and also sentenced to pay, as fine, the question of confiscation will be very marshy upon the accused; whereas before me, the order of confiscation has become already final and so far, steps already taken to challenge the order of confiscation have proved unsuccessful. In these circumstances, in my opinion the application filed" by the petitioner has been rightly rejected by both the courts. The Criminal Revision Petition is accordingly dismissed.