
(2007) 01 MP CK 0056
In the Madhya Pradesh High Court

Rajendra Mahajan

APPELLANT

Vs

State of Madhya Pradesh and Others

RESPONDENT

Date of Decision : 17-01-2007

Acts Referred:

Essential Commodities Act, 1955 — Section 10, 10C, 6A, 6C, 7

Citation : (2007) CriLJ 2827 : (2007) ILR (MP) 353

Hon'ble Judges : N.K. Mody, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.K. Mody, J.—The prayer in the petition is for quashing of the order dated 31-12-96 whereby the respondent No. 2 has confiscated the edible oil for the value of Rs. 17,000/- which has been confirmed by respondent No. 1 vide order dated 18-1-2005 (Annexure. P/5), the present petition has been filed.

2. Short facts of the case are that petitioner is the proprietor of M/s. Mahajan Traders and is carrying on his business at 1/2, Tamboli Bakhali, Indore. It is submitted that on 17-7-96, search was made by the Food Inspector at the shop of petitioner. A show-cause notice was issued to the petitioner on 9-8-1996 wherein certain violations were alleged on the part of the petitioner under the provisions of M.P. Scheduled Commodities Trading Licence and Jama Khori Par Nibandhan Order, 1991 and also M.P. Essential Commodities Price Exhibition and Price Control Order (which shall be referred hereinafter as "the Order"). In the said notice, the petitioner was asked why the articles which have been seized should not be confiscated. The reply to show-cause notice was submitted by the petitioner. After considering the same, vide order dated 31-12-96, respondent No. 2 confiscated the seized articles and directed the petitioner to pay dues amounting to Rs, 17,000/-. In appeal filed by the petitioner, the order was confirmed.

3. Learned Counsel for petitioner submits that order passed by the revisional

authority is illegal as the order Annx. P/5 has been passed by the Minister, Food, Civil Supplies and Consumer Protection, while the revision ought to have been decided u/s 6C of the Essential Commodities Act, 1955 by a Judicial Authority appointed by the State Government.

4. It is also alleged that proceedings under the provisions of Essential Commodities Act are quasi-criminal in nature. It is submitted that before passing any order of confiscation, there should be mens rea against the petitioner. It is submitted that since no mens rea is proved and no findings have been recorded, therefore, no order can be passed for confiscation of the articles. Reliance is placed on a decision of Allahabad High Court in the matter of Kishori Lal Bihani Vs. The Addl. Collector and District Magistrate, Kanpur and Others, , wherein the Allahabad High Court has held that-

the consideration of mens rea or bona fides of a dealer is relevant while passing an order of forfeiture of foodgrains from him u/s 6A. The view that the question of bona fide or mens rea of a dealer may have bearing in criminal proceedings and may be considered there if any prosecution is launched against the dealer and that those considerations are out of place at the stage of the confiscation, is not correct. The contravention attracting the provisions of Section 6A has the same legal incidence and consequences and has the same nature and character as the contravention made punishable by Section 7. The two provisions i.e. Section 6A and 7 are in pari materia.

5. Further reliance was placed on a decision in the matter of M/s. Laxmi Trading Co. v. The Additional District Magistrate 1989 C LJ 659, wherein a Division Bench of Orissa High Court has observed as under:

Mens rea is an essential ingredient to attract the provision of Section 6A of the Act. No doubt, Section 10C raises a presumption that culpable mental state exists, but it is rebuttable presumption and it will be open for the accused to prove that he had no such mental state with respect to the act charged. Section 10C itself indicates that mens rea is a necessary element to attract the provisions of the Act but by virtue of legal fiction, a presumption arises which can be rebutted by an accused.

In the instant case the prosecution was for storing pulses, oil seeds etc. in excess of the quantity allowed under the relevant orders. Neither the Collector while passing the order of confiscation nor the State Government while disposing of the appeal has considered the question of presence or absence of mens rea of the petitioner and whether in the facts and circumstances of the case, petitioner has been able to rebut the presumption arising out of Section 10C of the Act. On the other hand, the facts of the case reveal that the petitioner has been submitting returns as an "improper" on a bona fide belief that the provision relating to "improper" in the State Order still continues. Hence the order must be quashed.

6. Learned Counsel for respondents submits that the impugned order has already

been passed in accordance with law which requires no interference.

7. So far as the validity of the order Annx. P/5 on the ground that the order has been passed by the Minister, Food, Civil Supplies and Consumer Redressal Department is concerned, from perusal of the appeal which is Annx. P/4, it is evident that petitioner himself has submitted the appeal before the concerned Minister, which has been decided by the concerned Minister vide Annx. P/5. Apart from this, in the petition, no ground has been raised by the petitioner wherein jurisdiction of the concerned Minister has been challenged, therefore, at this stage at the time of final arguments, petitioner cannot be allowed to raise a ground which is not the ground raised in the petition. Moreover, since the petitioner himself has submitted to the jurisdiction of concerned Minister by way of filing the appeal, therefore, the petitioner cannot be permitted to challenge the validity of the order on the ground that concerned Minister was having no jurisdiction to decide the appeal.

8. In the matter of Nathulal Vs. State of Madhya Pradesh, while dealing with the matter of storage of food grains in excess of quantity prescribed by M.P. Food Grains Licensing Order 1958, it was held that-

Mens rea is an essential ingredient of a criminal offence. A statute may exclude the element of mens rea; it is, however, a sound rule of construction which is adopted in England and also accepted in India, to construe a provision which creates an offence in conformity with the common law rather than against it except where the statute expressly or by necessary implication. Of the question whether the element of guilty mind is excluded from ingredients of an offence the mere fact that object of the statute is to promote welfare activities or to eradicate a grave social evil is not by itself decisive. Only where it is absolutely clear that the implementation of the object of the statute would otherwise be defeated that mens rea may, by necessary implication, be excluded from a statute. The nature of the mens rea that would be implied in a statute creating an offence depends on the object of the Act and the provisions thereof.

It was further held that-

An offence u/s 7 of the Essential Commodities Act (10 of 1955), for breach of Section 3 of the Madhya Pradesh Foodgrains Dealers Licensing Order, 1958, necessarily involves a guilty mind as an ingredient of the offence. Considering the scope of the Act it would be legitimate to hold that an offence u/s 7 of the Act is committed by a person if he intentionally contravenes any order made u/s 8 of the Act. The object of the Act will be best served and innocent persons will also be protected from harassment.

9. In the matter of State of Madhya Pradesh Vs. Narayan Singh and Others, , it was observed that after the decision in Nathulal's case 1966 C LJ 71 (supra) Section 7 of the Essential Commodities Act was rendered by promulgating ordinance 6/67 which was later replaced by Act 36/67 and the change was effected with effect from the date of ordinance i.e. 16-9-1967. The word

"whether knowingly, intentionally or otherwise" were added between the word "contravenes" and the words and figure "any order made u/s 3". Again in the year 1974, pursuant to the recommendations of the Law Commission in their 47th Report and the experience gained in the working of the Act, by an Ordinance Section 7 of the Act was amended whereby the words "whether knowingly, intentionally or otherwise" which were introduced by Amending Act 36 of 1967 were deleted and the material part of Section 7(1) restored to its original frame and a new provision in Section 10 of the Act was added which reads as under:

Section 10C(1) : PRESUMPTION OF CULPABLE MENTAL STATE

In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation:

(1) In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact.

(2) For the purposes of this section, a fact is said to be proved only when the Court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

In this case it was further held that the effect of subsequent change in the statute is that a presumption of guilty mind on the part of the accused in respect of offences under the Act, including Section 7, would arise and it would be open to the accused to rebut the same. As the law now stands in any prosecution under the Act which requires a culpable mental state on the part of the accused, the same must be presumed unless the accused proves that he had no such mental state with respect to the offence for which he is tried. Now according to the explanation to Section 10(c) culpable mental state includes intension, motive, knowledge of a fact and belief in or reason to believe a fact. The decree of proof expected to rebut the same presumption has been indicated by Sub-section (2) thereof which says that a fact will be said to be proved only if it exists beyond reasonable doubt and it will not be sufficient to prove its existence by preponderance of probability. Thus, the burden of proof lies heavily on the accused to rebut the statutory presumption and the degree of proof expected i.e. required for the proof of a fact by the prosecution. There can therefore, be no doubt that the aforesaid legislative changes have reversed the thrust of the decision of the Supreme Court in *Nathulal Vs. State of Madhya Pradesh*, .

10. From perusal of the reply to the show-cause notice, it is evident that the petitioner has confessed that the relevant entries regarding sale of groundnut oil and rapseed oil were not made in the daily register. Explanation was given that

the petitioner was out of station on the relevant date. In the reply it has not specifically mentioned that what was the compelling reason for the petitioner to leave the town all of a sudden. The place where the petitioner had gone is also not mentioned. The reply submitted by the petitioner is not supported by any affidavit nor it is stated that petitioner wanted to adduce the evidence in this regard. In the matter of Shambhu Dayal Agarwala Vs. State of West Bengal and Another, wherein the Hon''ble Apex Court has held that "the language of Clause (b) of Section 7(1) is clearly mandatory and leaves no option to the Court but to order forfeiture. This becomes clear if this clause is read in juxtaposition with Clause (c) which confers a discretion on the Court to order forfeiture.

11. In view of the aforesaid position of law, this Court is of the view that no illegality has been committed by the respondent No. 2 in passing the order of confiscation dated 31-12-1996 and also by respondent No. 1 in passing the order dated 18-1-2005, Annexure-P/5 whereby the order of confiscation was confirmed. In view of this, petition stands dismissed. No order as to costs.