
(2006) 07 KL CK 0085
In the High Court Of Kerala
Case No : Criminal Appeal No. 53 of 1998

Ravi	Vs	APPELLANT
State		RESPONDENT

Date of Decision : 21-07-2006

Acts Referred:

Essential Commodities Act, 1955 — Section 12, 3, 7, 7(1)

Citation : (2006) 4 KLT 279

Hon'ble Judges : J.M. James, J

Bench : Single Bench

Advocate : Abraham Vakkanal, for the Appellant; K. Harilal, Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

J.M. James, J.—The accused in S.T. No. 68/1993, on the file of the Special Judge for E.C. Act cases, Thrissur, is the appellant. He face the charges under Clause 3 of the Kerala Food Stuffs (Display of Prices by Catering Establishments) Order, 1977, in short "the Order", and also under Sections 3 & 7(1)(a)(ii) of the Essential Commodities Act, 1955, in short "the Act". The learned Special Judge found the accused guilty of the offence alleged, and therefore, convicted and sentenced him to undergo rigorous imprisonment for six months, and also to pay a fine of Rs. 2000/- under Clause 3 of the Order, read with Sections 3 & 7 of the Act. In default of payment of fine, the accused was directed to undergo rigorous imprisonment for a further period of six months. The same is under challenge through this appeal.

2. The brief facts of the case are that, the appellant, accused, is in charge of the "Queens Restaurant and Hotel" at Piravom, within the Piravom Municipality. On 11.5.1993, at about 1.30 p.m., PW.1, the Taluk Supply Officer, Muvattupuzha, and PW.2, the Rationing Inspector of Muvattupuzha, along with the driver of PW.1, went to the hotel of the appellant. They had meals. An amount of Rs. 21/- was realised from Pws.1 to 3 for three meals. However, Pws.1 and 2 found that

the price board of the food stuffs in the establishment was not displayed, as required under C1.3 of the order. On query, the appellant answered that the board was displayed, but it overturned, and, therefore, it was kept underneath the cash table. The said display board was also shown to Pws.1 and 2. Ext.P1 mahazar was prepared to this effect by PW.1. It was accordingly forwarded to Piravom Police Station, who subsequently registered Crime No. 103/93 of that police station, for the offence, as stated above.

3. When the appeal came up for consideration, the learned Counsel for the appellant submitted that u/s 12(a) of the Act, because of the lapse of the Essential Commodities (Special Provisions) Act, 1981, in short "the Special Provisions Act", the power of the Special Courts to hold trial under the Act had extinguished, and, therefore, the trial is vitiated and the impugned judgment is bad in law. The learned Counsel relied on *State of Tamil Nadu v. Paramasiva Pandian* (2002) SCC (Cri.) 62, to emphasise the point. That was a case where in the year 2004, an offence was committed by the accused, and they were remanded to judicial custody by the Special Court constituted under the provisions of the Act. The Apex Court found that as the Special Provisions Act had lapsed, the Special Court had no authority, and, hence sustained the order of the High Court of Tamil Nadu, which set aside the proceedings initiated against the accused therein.

4. The learned Public Prosecutor and Government Pleader, Sri. K. Harilal, submitted that the Special Provisions Act, came into effect on 1.9.1982, and it was extended from time to time upto 1997. Thereafter the Special Provisions Act was not extended. But an ordinance was promulgated on 3.14.1997, and it was re-promulgated on 25.4.1998. However, thereafter it got lapsed, as the ordinances were not made a law. Hence, he submitted that all actions of the Special Courts till the expiry of valid period of the last ordinance shall be within the Special Provisions Act.

5. The Bar placed reliance on the judgment of a learned Single Judge of this Court in *Karim Vs. State of Kerala*, wherein the learned Judge held that "Both the appellants were tried and convicted by Special Court subsequent to 31.8.1997. Therefore, the Special Judge had no jurisdiction either to try the appellants, or to convict them, as had been done in these cases. Therefore, the trial and conviction are vitiated."

6. The learned Judge had proceeded on the premises that the Special Provisions Act had lapsed on 31.8.1997. That proposition is true. But the Court was not informed of the fact that on 3.10.1997, "The Essential Commodities (Special Provisions) Ordinance, 1997 (No. 21 of 1997)" was promulgated and published by the Government of Kerala Notification No. 16782/Leg. Pbn. 2/97/Law dated 20.10.1997. Thereafter, The Essential Commodities (Amendment) Ordinance, 1998 (No. 13 of 1998)" was published through Government of Kerala Notification No. 9255/Leg. Pbn. 2/98 Law dated 28.5.1998. The above two ordinances clearly show that even after the lapse of the Special Provisions Act on 31.8.1997,

because of the promulgation of the Ordinance on 20.10.1997 and thereafter on 28.5.1998, the Special Courts continued to exist and legally function till the expiry of the validity of the re-promulgated ordinance on 28.5.1998. Hence, the observation of the learned Single Judge, holding the date of expiration of the provisions under the Special Provisions Act as 31.8.1997 is factually erroneous. Therefore, it has to be accepted that any trial that was held upto 28.11.1998, the validity period of the ordinance dated 28.5.1998, has to be upheld. The learned Single Judge had, as stated above, fixed the date as 31.8.1997, because of the non-production of the above two ordinances before him. Thus, *Karim v. State of Kerala*, cited above, is not a good law.

7. The impugned judgment herein was passed on 5.1.1998. Therefore, I agree with the arguments of the learned Public Prosecutor, that the said judgment was within the period covered by the ordinance dated 3.10.1997 and published on 20.10.1997. But *Pararnasiva Pandian's* case, cited above, was in relation to the period of 2000, where the period of even the re-promulgated ordinance got extinguished itself. Hence, the facts in *Pararnasiva Pandian's* case are not applicable to the facts of the case at hand. Therefore, the argument advanced by the learned Counsel on this point cannot be accepted.

8. The counsel for the appellant further submitted relying on the evidence of Pws.1 to 3 that the board was displayed as per the provisions of the order, but it over turned. Therefore, it was kept on the side of the table. The fact remains that the rate of a single meal written on the display board, as could be seen from Ext.P1 mahazar, was Rs. 7/- per meal. PW.1 deposed that he had paid Rs. 21/- for three meals. But curd was not supplied along with the meals, and price of Rs. 7/- per meal include curd also. Curd was not demanded by Pws.1 to 3, explains the appellant. According to me, the same does not materially affect the prosecution case, which is regarding the non display of price board, and the same having kept under the cash counter. When I go through the facts of this case. I find that Pws. 1 to 3 had paid Rs. 7/- each per meal, and therefore, Rs. 21/- paid by them, is as per the rate displayed by the appellant.

9. The Special Judge has considered about the meaning and import of the word "conspicuous place" included under Clause 3 of the Order. Ext. P1 itself show that there was display board. The question, therefore, arises is whether the display board was "conspicuous" or not. As the board was on the side of the table, the explanation of the appellant-accused that it over turned, and, therefore, it was kept on the side, need not be brushed aside.

10. The counsel further argued that no document has been produced to connect the appellant with the committing of the crime. The evidence available clearly show that at the time, when Pws. 1 and 2 went to the establishment, there was a salesman and he was manning the counter. It was he who received the amount from Pws. 1 to 3. The argument of the counsel is that the evidence made available by the prosecution is insufficient to hold that the accused was present at the time of the occurrence. Clause 3 of the order states that either the owner

or the person in-charge of catering establishment, is responsible to display the board of every item of food stuffs in the establishment. Pw.1 deposed that he had verified the licence issued in favour of the appellant. Thus, he being the owner, as contemplated under Clause 3 of the order, the proceedings initiated against him by the prosecution, at the instance of Pw.1, has only to be accepted.

11. In the light of the above discussions, I hold that the board which was displayed on the side of the table was displayed at a conspicuous place, but because of its over turning, the appellant was proceeded against by Pws. 1 and 2. There was no mens rea on the part of the appellant to violate Clause 3 of the Order. The amount received by the salesman at the counter, at the rate of Rs. 7/- per meal, also clearly show that the same was the rate written on the display board. Therefore, there is no violation of any of the provisions of the Order, much less, Clause 3 of the Order. In such circumstances, I hold that the conviction and sentence passed under Clause 3 of the Order and under Sections 3 and 7 of the Act, cannot be sustained. Therefore, I set aside the same. The appellant accused, is set at liberty forthwith, cancelling his bail bound.

The Crl. Appeal is allowed as above.