
(2004) 11 MAD CK 0079
In the Madras High Court
Case No : Criminal R.C. No. 1212 of 2004

R.P. Sharma

APPELLANT

Vs

State

RESPONDENT

Date of Decision : 18-11-2004

Acts Referred:

Penal Code, 1860 (IPC) — Section 270
Prevention of Food Adulteration Act, 1954 — Section 16(1), 7
Tamil Nadu Prohibition of Smoking and Spitting Act, 2002 — Section 12, 7, 9

Citation : (2004) 11 MAD CK 0079

Hon'ble Judges : AR. Ramalingam, J

Bench : Single Bench

Advocate : AR.L. Sundaresan, for the Appellant; V. Madhavan, Government Advocate (Crl. Side), for the Respondent

Final Decision : Allowed

Judgement

AR. Ramalingam, J.—This revision has been filed by aggrieved R.P. Sharma against the order passed by the Principal Sessions Judge, City Civil Court in Crl. R.C. No. 135 of 2004 whereby he has reversed the order passed by the VIII Metropolitan Magistrate, George Town, Chennai in Crl. M.P. No. 3443 of 2004 in Crime No. 214 of 2004 on the file of C1 Flower Bazaar Police Station (Crimes), Chennai.

2. The facts leading to this revision can be briefly narrated as follows:-

On 24.5.2004 at about 3.30 pm, the Inspector of Police attached to C1 Flower Bazaar Police Station, on information given by the Sub Inspector of Police of the same police station, viz., one Kannan to the effect that while the said Kannan was on patrolling duty at about 2.30 pm on that date upon the junction of Godown Street and Uthandi Street, assembly of persons were found near an auto halted near the temple and that on his arrival near them, except two, others ran away and the two persons were secured viz., Sabeer, Loadman and Sampath the driver of that auto and on search made upon the bags available in the auto, it

was found that they contained prohibited tobacco and the said bags belong to one Shanthilal and they were kept for distribution to various shops available, registered a case in Crime No. 214 of 2004 u/s 270 IPC read with sections 7, 9 and 12 of the Tamil Nadu Prohibition of Smoking and Spitting Act, 2002 and sections 7 and 16(1)(a)(i) of the Prevention of Food Adulteration Act, 1954. On further investigation, the Inspector of Police was able to note that the prohibited tobacco were stored in the premises bearing door No. 29, Zinda Sahib Street, Chennai 600 079 viz., the warehouse belonging to South Eastern Road Carriers and then on 25.5.2004, the said warehouse was broke open by the Assistant Commissioner along with other police officers and 234 bags of tobacco, 40 bags of Super Gutkha and 5 bags of Shimla gutkha were seized worth of Rs. 12,90,450/=. Thereupon the seized materials were produced by the VIII Metropolitan Magistrate, George Town for custody and the petitioner R.P. Sharma filed CrI. M.P. No. 3443 of 2004 for interim custody of those materials before the VIII Metropolitan Magistrate and the Trial Magistrate, after perusing the documents of invoices and bills produced by the petitioner saying that the materials were booked by one Shanmugam Agencies at Calicut, Kerala and the materials were supplied from Sakthi Traders, New Delhi, ordered for interim custody regarding major portion of the seized goods.

3. Aggrieved against such order for interim custody, the State has filed CrI. R.C. No. 135 of 2004 and the Principal Sessions Judge, City Civil Court has reversed and set aside the order passed by the VIII Metropolitan Magistrate, George Town, Chennai.

4. Aggrieved against such order of the Principal Sessions Judge, this revision has been filed by raising the grounds that the Principal Sessions Judge has failed to note that the petitioner is a transporter having valid national permit and the materials were booked by Shanmugam Agencies at Calicut from Sakthi Traders at New Delhi and the materials were entrusted for transportation through the petitioners herein and while transporting the materials, the same were handled at Chennai for transporting the same to Calicut and that the Principal Sessions Judge also failed to note that the petitioner has obtained order from High court in W.P. No. 8385 of 2004 to the effect that the petitioner is entitled to store in the State of Tamil Nadu and transport materials and that the Principal Sessions Judge has failed to note that the materials were not stored within 100 metres of school, college or other educational institutions within the meaning of Tamil Nadu Prohibition of smoking and Spitting act, 2002 and that the break open of the godown has been made without prior orders from any court without following the procedures laid down in Cr.P.C and that only after issue of telegram by the petitioner that police is violating the order in W.P. No. 8385 of 2004, the police has recorded the alleged confession of one Shanthilal as if the godown of the petitioner is being utilised for storing the materials and that the storage of the materials were only for transporting to Calicut and it was never for permanent storage or sale within the State of Tamil Nadu and that the materials recovered by the police are perishable in nature and would not be useful after the period of

60 days from the date of its manufacture and the materials are worth of several lakhs of rupees and thereby the order passed by the Principal Sessions Judge has to be set aside.

5. I have heard the arguments of the petitioner's counsel as well as the respondent's counsel and from such arguments, I am able to see that many writ petitions were filed challenging the said Act and Notification No. 780 dated 19.11.2001 made by Tamil Nadu Government published in its Gazette wherein the manufacturing of tobacco etc., for sale or storage or for distribution of Tobacco, Pan Masala and Gutkha was prohibited under the Prevention of Food Adulteration Act and two of such writ petitions were disposed of by this court on 3.1.2002 and 1.3.2002 to the effect that there should not be any sale or distribution of Chewing Tobacco, Pan Masala, Gutkha in any form for consumption inside the State of Tamil Nadu. However, the First Bench of this Court in a batch of Writ Appeals has held that the said Notification No. 780, published in the Tamil Nadu Government Gazette on 19.11.2001 in exercise of the powers conferred under Clause (iv) of section 7 of the Prevention of Food Adulteration Act, 1954, has struck down as unconstitutional and all the writ appeals were allowed and that it is also clarified in that judgment that any action consequent to the publication of the above Notification has to be undone and any material seized has to be restored to the respective writ appellants.

6. Therefore, it becomes clear that the very notification of the Tamil Nadu Government Gazette under which the police has initiated this case as well as the other matters has been struck down and consequently, it goes without saying that the materials seized in this case from the godown of the petitioner have to be returned to the petitioner. The First Bench has struck down the Notification as per its judgment dated 23.8.2004. Accordingly, the order passed by the Principal Sessions Judge has to be necessarily set aside and the revision has to be allowed.

7. In the result, the revision is allowed and the order of the Principal Sessions Judge is set aside and the petitioner is at liberty to move the VIII Metropolitan Magistrate for appropriate order for getting return of the materials seized for the purpose of this case and on such order, the respondent police is also under obligation to return the materials to the petitioner.