(1987) 08 MAD CK 0054

In the Madras High Court

Case No : Criminal R.C. No. 192 of 1982

State APPELLANT

Vs

Kadirvel Murugan, Partner, A.D. Kalyanasundara Nadar, Tuticorin RESPONDENT

Date of Decision : 26-08-1987

Acts Referred:
Essential Commodities Act, 1955 — Section 6B

Citation : (1988) LW(Cri) 223

Hon'ble Judges : Ratnavel Pandian, J

Bench : Single Bench

Advocate : N. Dinakar, Govt., Criminal Side, for the Appellant; K. Annamalai, for the Respondent

Final Decision : Dismissed

Judgement

Ratnavel Pandian, J.—This revisions preferred by the State represented by the learned Public Prosecutor, canvassing the correctness and legality of the judgment made in Crl. App. No. 138 of 1981 on the file of the Court of the Additional Sessions Judge, Tirunelveli, reversing the order of the District Revenue Officer, Tirunelveli, in D. Dis. No. 9989/81, confiscating 14 tins of groundnut oil.

2. The brief facts of the case are as follows: The Sub Inspector of Police (C.S.)., C.I.D., and party inspected the groundnut oil shop at door No. 36, Great Cotton Road, Tuticorin, on 29th January, 1981 at about 11.30 a.m. At the time of inspection, Kadirvel Murugan, one of the Partners of M/s. A.D. Kalyanasundara Nadar. was present in the shop, attending to business. As per the stock register maintained in the shop, the stock of groundnut oil at the time of the inspection should have been 28 tins of groundnut oil. On physical verification, the Sub Inspector and party found only 14 tins of groundnut oil. When questioned, the respondent could not give any satisfactory explanation. The Sub Inspector of Police seized the stock of 14 tins of groundnut oil along with the records under the mahazar attested by witnesses, and then entrusted the stock to the accused

for safe custody. The Inspector of Police, Civil Supplies, C.I D., registered a case under CI. 14 of Tamil Nadu Groundnut and Groundnut Products (Regulation of Trade) Order 1974, and investigated the case.

3. A show cause notice under S. 6B of the Essential Commodities Act was issued to the respondent on 13th April, 1981, to which the respondent sent his reply dated 21st April, 1981 reiterating his explanation as given by him in his claim petition dated 7th March, 1981 and stating that M/s. Kalyanasundara Nadar is a registered firm consisting of two partners and he has licence to dealing in groundnut oil and groundnut oil products by means of whole sale licence, which remained valid upto 31st March, 1981 and that he had already given the explanation to the police. Further, he has also complained that he was not given any opportunity to explain the shortage in the stock of groundnut oil. According to him, all the 14 tins of groundnut oil were sold on credit basis and he has also given the particulars of numbers of the five bills and the names of the customers and the numbers of the tins sold, which are extracted in the order of confiscation. But the District Revenue Officer has passed the order of confiscation.

4. On appeal, the learned Sessions Judge relying upon the two decisions of this Court in Rathinam v, Revenue Divisional Officer, Vridhachalam 1980 L.W. (Crl,) 215, and Perumal Pillai, In re 1980 L.W. (Crl.) 222, held that the confiscation is not proper in the light of the rulings on the ground that no order can be passed to the prejudice of a party without holding an enquiry and examining witnesses to establish the irregularity alleged against the party. In the present case, the respondent has come forward with an explanation even at the time of the seizure, which explanation in short is made mention of in the seizure mahazar itself, and subsequently in the reply given to the show cause notice also he has reiterated the same explanation. Therefore, in such a circumstance, it cannot be said that the respondent has come forward with the explanation at a belated stage. Hence, the contention of the learned Public Prosecutor that this explanation cannot be accepted cannot be countenanced. It may be noted here that this Court in Crl. Rev. Case Nos. 689 and 690 of 1984 State by Public Prosecutor v. Jayavel and Ramalingam Pillai, following the above two decisions of this Court cited in the impugned judgment, has dismissed the revision cases on two grounds, one of which being that no opportunity was given to the dealer as well as the owner of the lorry in that case to cross-examine one Rajendran bringing him as a witness. In the present case, the learned Sessions Judge has observed thus:

On a perusal, of the lower court records. I find that though the appellant has given an explanation regarding the alleged shortage of stock and stated that 14 tins of groundnut oil were sold on credit and he has also produced certain bills, no enquiry has been done by the District Revenue Officer by examining any witness to find out whether the explanation offered by the appellant could be true. He has simply relied upon the statement of the police officer and passed an order confiscating 14 tins of groundnut oil which was found in the shop of the appellant.

After going through the records and in view of the observations made by this Court in the decisions cited above, I do not find any ground to interfere with the impugned order. Hence, the revision case is dismissed.

