

(1987) 06 MAD CK 0026

In the Madras High Court

Case No : Criminal App. No. 363 of 1984

State by Public Prosecutor

APPELLANT

Vs

Raja and Sankaralingam

RESPONDENT

Date of Decision : 29-06-1987

Acts Referred:

Tamil Nadu Weights and Measures (Enforcement) Act, 1958 — Section 40

Citation : (1988) LW(Cri) 272

Hon'ble Judges : Maheswaran, J

Bench : Single Bench

Advocate : Kannappa Rajendran, Government Advocate Criminal side Public Prosecutor, for the Appellant; I. Subramanian, for the Respondent

Final Decision : Dismissed

Judgement

Maheswaran, J.—This appeal is preferred by the State against the judgment of the Chief Judicial Magistrate, Tirunelveli, acquitting the accused who were charged for offences under S. 32 of the Tamil Nadu Weights and Measures (Enforcement) Act 1958.

2. On 28th May, 1982 at about 9. 45 a.m., the Consumer Co-operative Stores at Tirunelveli sold six liters of kerosene to one Mrs. Eswaran under Bill No. 35450 and under Bill No. 35451 and the kerosene was delivered against two family cards. It was checked by the Assistant Labour Inspector and it was found that there was a shortage of 250 ml. of kerosene. P.W. 1 is Mrs. Eswaran. She purchased kerosene on behalf of the Thayammal and Rajan Pillai. It was measured in the presence of the accused and P.W. 1 and there was a shortage of 250 ml. as already stated and P.W. 2, Assistant Inspector of Labour, prepared Ex. P3, a mahazar, containing these particulars. He sent notice to the Secretary of the Consumer Co-operative Stores and to the accused. They sent replies. P.W. 2 then filed a complaint.

3. The first accused in his reply has stated that there was heavy rush and that

the short supply was due to pressure of work and that he is responsible for that. But the trial Magistrate acquitted the accused on the ground that the Cooperative Society ought to have been made a party and in the absence of the Co-operative Society as a party, the accused cannot be found guilty as the offence has been committed by the accused not in their individual capacity.

4. The accused are salesman and bill clerk. The Society alone sells kerosene to the card-holders. The accused are not in charge of conduct of the affairs of the society. Even though the first accused may say that he is solely responsible, there is no evidence in this case showing as to who is responsible for the day to day transaction of the Society. Under S. 40 of the Tamil Nadu Weights and Measures (Enforcement) Act, 1958 if a person committing an offence under the Act or any rule made thereunder is a company, every person who at the time the offence was committed was in charge of and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. The proviso says that nothing contained in sub-S. (1) shall render any person liable to punishment, if it is proved that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. In this case, the Society was not impleaded as a party. These workers who are working in the Society cannot be independently liable. The view of the Magistrate that the Society must be made a party, appears to be correct and in the absence of the Society, the accused alone cannot be punished. In an appeal against acquittal, even if two views are possible, the High Court should be slow in reversing the judgment of acquittal. For these reasons, the appeal is dismissed.