
(1979) 02 GUJ CK 0006
In the Gujarat High Court

State of Gujarat

APPELLANT

Vs

Chandulal Jethalal and Others

RESPONDENT

Date of Decision : 13-02-1979

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 3 , 7, 7

Citation : (1980) 21 GLR 353

Hon'ble Judges : M.K. Shah, J

Bench : Single Bench

Judgement

M.K. Shah, J.—These two appeals arise out of an order of conviction and sentence passed by the learned Metropolitan Magistrate 4th court, Ahmedabad dated 6-1-1978 convicting the accused for the offence u/s 7 read with Section 3 of the Essential Commodities Act, ("the Act")

2. A few facts may be stated briefly so that the points which arise in these appeals may be considered. Accused No. 1 is the Manager and accused Nos. 2 and 3 are the Factory Manager and Assistant Salesman respectively of M/s. Bhalakia Mills Company Limited Ahmedabad ("the company"). By an order dated 22-9-1975 the Director in the office of the Textile Commissioner issued a requisition requiring it of the powers conferred by Clauses 20 and 21-A of the Cotton Textile Mills Control Order, 1948 ("the order") read with Textile Commissioner's (sic) order dated 4-3-1966 directing the company to pack during the quarter ending on 31-12-1975 a quantity of controlled cloth not less than (sic) sq. meters. Similarly by another requisition dated 31-12-1975, the company was directed to pack controlled cloth of not less than 733980 sq meters during the quarter ending on 31-1-1976. The company could not (sic) required quantity during the said two quarters ending 31-12-1975 and 31-3-1976 and the shortage was to the extent of 370426 sq meters for these two quarters. The three accused were then prosecuted before learned Metropolitan Magistrate, 4th court, Ahmedabad in two cases filed against them in respect of the breach committed for each of the quarters (viz. criminal cases Nos. 3025 and 3409 of 1977) for the (sic), Section 7 read with Section 3 of the

Act, for breach of (sic) under Clause 2A(,) read with Clause 20 of the order, inasmuch (sic) failed to pack the required minimum quantity of controlled cloth as directed by the aforesaid two requisitions. The learned Magistrate framed a charge against the three accused to the effect that, as per the order of Textile Commissioner they should have packed the minimum quantity of cloth amounting to 1556608 sq. meters while in fact, they had packed 186182 sq. meters and thus by short packing 1370426 sq. meters of cloth they had committed breach of the Textile Commissioner's order and thus all the accused had violated the provisions of Clause 21A(i) of the (sic) under Sections 3 and 7 of the Act. All the accused pleaded guilty to the said charge and the learned (sic) judge accepting their plea of guilty, recorded a finding of Section against them for the offence u/s 3 read with Section 7 of the Act and sentenced accused No. 1 to pay fine of Rs. 4,000/-, in default S.I. for six months; accused No. 2 to pay a fine of Rs. 1,000/- in default, S.I. for two months and accused No. 3 to pay a fine of Rs. 600/- in default, S.I. for one month.

3. Aggrieved by this order passed in criminal cases Nos. 3405 and 3025 of 1977, so far as it relates to the sentence, the State has preferred these two appeals, being criminal appeals No. 212 and 213 of 1978 praying that the sentence be enhanced on the ground that it is grossly inadequate and unduly lenient instead of being deterrent and that, as provided by Section 7 of the Act, some substantive sentence ought to have been awarded and not mere sentence of fine, as done by the learned Magistrate.

4. Mr. Thaker, the learned Public Prosecutor appearing for the State contends that in the instant case, no substantive sentence, at all, has been awarded; that looking to the gravity of the offence, the sentence is too lenient and unduly light, instead of being deterrent and that the court should, therefore, enhance it to a reasonable sentence of imprisonment and fine.

5. Mr. A.H. Mehta, the learned Advocate appearing for the accused-respondents, while showing cause for reduction of the sentence, has pleaded for acquittal of the accused on the ground that no order of conviction could be recorded against the said accused for the offences under the said Sections unless the company was prosecuted and proved to have committed the offence alleged. As submitted by Mr. Mehta, in the instant case, the requisitions which were issued by virtue of powers vested in the Textile Commissioner under Clause 21A read with Clause 20 of the Order, were not issued against any of the three accused but were issued against the company itself and the requisitions directed the company to pack a particular minimum quantity of controlled cloth during the specific quarters. It was for the company to carry out those requisitions and the offence committed if any, would be by the company. Simply because accused No. 1 happens to be the Managing Director of the company and accused Nos. 2 and 3 its employees, it cannot be said that they have also committed the offence.

6. Relevant provisions of the Act, with regard to the offences by a company, in this connection, may be looked into as they are contained in Section 10 of the

Act. Sub-section (1) of Section 10 provides-

(1) If the person contravening an order made u/s 3 is a company, every person who, at the time the contravention 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 contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this Sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

Sub-section (2) reads

(2) Notwithstanding anything contained in Sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

6. Mr. Mehta, therefore, contends that unless the company is prosecuted and is proved to have committed the offence, other persons connected with the company, on the ground of their being in charge of and responsible to the company for the conduct of the business cannot be proceeded against. Again, in order that any director, manager, secretary or other officer of the company can be proceeded against, the prosecution has first to prove that the offence has been committed by the company and then the second requirement is that the said offence has been committed with the consent or connivance of or is attributable to the neglect on the part of any such director, manager, etc. In the instant case, as neither the company was prosecuted nor proved to have committed the offence, no prosecution could lie against accused Nos. 1, 2 and 3 on the ground that they were connected with the affairs of the company in their capacity as Managing Director, factory Manager and Assistant Salesman, respectively.

7. Mr. Mehta seems to be right in his submission as is evident on a bare reading of the section, relevant provisions whereof I have set out above. The provisions contained in Sub-section (1) came up for interpretation before the Supreme Court in *State of Madras Vs. C.V. Parekh and Another*, and the Supreme court has interpreted the same in the following terms:

It was urged that the two respondents were in charge of, and were responsible to, the company for the conduct of the business of the company and consequently, they must be held responsible for the sale and for thus contravening the provisions of Clause 5 of the Iron and Steel (Control) Order.

This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of Clause 5 of the Iron and Steel (Control) Order was made by the company. In fact, the company was not charged with the offence at all. The liability of the persons in charge of the company only arises when the contravention is by the company itself. Since, in this case, there is no evidence and no finding that the company contravened Clause 5 of the Iron and Steel (Control) Order, the two respondents not be held responsible.

8. Here also, apart from the question as to whether the accused were in charge of and responsible to the company for the conduct of its business, the first condition for the applicability of the said Section to the effect that the person contravening the order must be the company itself is not satisfied. There is no finding by a competent court that the contravention was done by the company. In fact, the company has not been charged for the offence, at all, and the liability of the respondents accused in charge of the company would not arise, because, unless the contravention by the company is proved in a proceeding against the company as an accused, the liability of others in charge of the management of the company would not arise.

9. With regard to the applicability of Sub-section (2), the provisions contained therein would not be attracted unless, first of all, the prosecution proves that the offence has been committed by the company. If this condition is satisfied, then the question of liability of a director etc. on the grounds mentioned in the said Sub-section would arise, and not otherwise.

10. The prosecution, therefore, against the respondents-accused in the absence of the company having been prosecuted, was not legal and any plea of guilty by them to the charge as aforesaid would not entitle the learned Magistrate to record a finding of guilty against them, because the condition precedent viz. the company having committed the offence and having been prosecuted for the offence and the same having been proved against it, is missing in this case. Mr. Mehta, therefore, succeeds in challenging the order of conviction passed against the respondents-accused and the result will be the following order:

Appeals fail. However, in view of the accused having succeeded in challenging the orders of conviction, the orders of conviction in both the cases are set aside and accused are acquitted of the offence with which they were charged. Fine, if paid, be refunded.