

(2003) 10 P&H CK 0067

In the Punjab And Haryana At Chandigarh

Case No : Criminal Miscellaneous No. 8945-MA of 1990

State of Haryana

APPELLANT

Vs

Baru Mal Sadhu Ram and others

RESPONDENT

Date of Decision : 29-10-2003

Acts Referred:

Citation : (2004) 1 AICLR 798 : (2004) 1 RCR(Criminal) 143

Hon'ble Judges : Nirmal Singh, J

Advocate : Mr. K.S. Chauhan, Deputy Advocate General, Haryana. Mr. Neeraj Sharma, Advocate., Advocates for appearing Parties

Judgement

Nirmal Singh, J.

1. The State of Haryana is aggrieved by the judgment dated 7.2.1990 by which Baru Mal Sadhu Ram, Vidya Rattan and Sadhu Ram had been acquitted of the charge under Section 7 of the Essential Commodities Act by the Presiding Officer, Special Court, Kurukshetra.

2. The respondents along with one Mangat Ram were prosecuted for contravening clause 11(i) of the Haryana Food Articles (Licensing and Price Control) JUDGMENT 1985 and also violating clause 3(i) of the Licence issued under the said order and also infringing the conditions of Notification No. IL88/16383 dated 16.10.1988 under the said order. They were also charged under clause 13 of the Haryana Rice Procurement (Levy) JUDGMENT 1985 for violating section 3 of the Essential Commodities Act, 1955.

3. To prove the charge against the respondents, the prosecution examined B.C. Sharma, District Food and Supplies Controller, Kurukshetra as PW1 who proved the photostat of the licence issued in favour of M/s Baru Mal Sadhu Ram, Commission Agent upto 31.3.1989 Ex.PA; Bachan Singh, Assistant Food and Supplies Officer as PW2 who deposed that he alongwith AFSO Kurukshetra and Chamel Singh Inspector and Jai Singh SubInspector checked the premises of M/s Baru Mal Sadhu Ram and found the defects as mentioned in the report Ex.PC.

Inspector Chamel Singh appeared as PW3 who took into possession various documents vide memo Ex.PK and Inspector Chaudhary Ram PW4 is the investigator of this case, who on receipt of report Ex.PC, had recorded the formal FIR Ex.PC/1.

4. When the respondents were examined under Section 313 Cr.P.C. to explain the incriminating circumstances appearing against them, they denied simplicitor and false implication. When called upon to enter their defence, they examined Sushil Kumar as DW1 who deposed that there were excessive rains and floods in the year 1988 and the permissible limit of moisture was 22% in the purchased paddy. He also deposed that in the process of shelling, 50/60 bags of paddy were involved and any team coming for checking the stock ordinarily does not take these bags into account.

5. After perusing the evidence on record and hearing learned counsel for the respondents, the learned trial Court convicted Mangat Ram son of Kishori Lal and firm M/s Baru Mal Sadhu Ram, Commission Agent Ladwa under Section 7(1)(a) (i) of the Essential Commodities Act (for short the "Act") as it was a case of contravention of provisions as contained in clause 3(2)(i) of the Essential Commodities Act and sentenced Mangat Ram to undergo imprisonment till the rising of the Court and to pay a fine of Rs. 10,000/ and in default of payment thereof, to undergo rigorous imprisonment for a period of three months whereas Kishori Lal, Sadhu Ram and Vidhya Rattan were acquitted.

6. Mangat Ram filed a separate appeal against his conviction, which was got dismissed being not pressed on the statement made by his counsel.

7. Aggrieved by the judgment of acquittal of the respondents, the State has preferred this appeal.

8. Mr. Chauhan, learned Deputy Advocate General appearing for the appellant/ State has assailed the judgment of acquittal on the grounds that the learned trial Court has not appreciated the evidence on record in right perspective; that the respondents were the partners of the firm M/s Baru Mal Sadhu Ram, Commission Agents and under subsection (2) of Section 10 of the Act, the responsibility of every partner of the firm is vicarious and all the partners are equally liable. He further contended that the learned trial Court has erroneously held that the respondents were not responsible for the conduct of the business of the partnership firm.

9. Before considering the submission made by the learned counsel for the appellant, it will be appropriate to notice the provisions of Section 10 of the Act :

"(1) If the person contravening an order made under Section 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;

(2) Notwithstanding anything contained in subsection (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.

Explanation. For the purposes of this Section,

(a) "COMPANY" means any body corporate, and includes a firm or other association of individuals; and

(b) "DIRECTOR" in relation to a firm means a partner in the firm."

10. A conjoint reading of Section 10 read with clauses (1) and (2) of the Act makes it crystal clear that in case of contravention of any provisions of the Act, the firm and the partner in charge and responsible to the firm for the conduct of the business of the firm shall be liable for punishment for its violation. Explanation to subsection (2) makes it clear that company includes the partnership firm. A partner of the firm is equivalent to the Director of a private limited company.

11. In the instant case, the learned Deputy Advocate General fails to point out from the evidence on the record that the respondents were incharge and responsible for the conduct of the business of the firm. The learned trial court after appreciating the evidence on record has rightly come to the conclusion that the respondents were neither the incharge nor responsible for the conduct of the business and has rightly acquitted them of the charge.

For the reasons mentioned above, there is no merit in this appeal and the same is dismissed.