

(1991) 05 P&H CK 0040

In the Punjab And Haryana At Chandigarh

Case No : Criminal Appeal No. 264-DBA of 1983

State of Haryana

APPELLANT

Vs

Roshan Lal

RESPONDENT

Date of Decision : 03-05-1991

Acts Referred:

Citation : (1993) CrLJ 1683 : (1991) 3 RCR(Criminal) 192

Hon'ble Judges : S.S.Grewal, J and A.L.Bahri, J

Advocate : R.C. Chauhan, Rajinder Goel, Raghbir Chaudhary, Advocates for appearing Parties

Judgement

A.L. Bahri, J.

1. Vide this judgment, eight Criminal Appeals No. 264 to 271DBA of 1983 are being disposed of as the facts and the question involved are common. Facts are taken from Criminal Appeal No. 264DBA of 1983. On October 22, 1977, at about 3.00 P.M. S.I. Yudhishter Lal, S.H.O. Police Station, City Kaithal, while on patrol duty received secret information that Neki Ram and others were doing business of Forward Contracts in Old Grain Market, Kaithal. He formed a Police Party and joined certain persons therein. He went to Old Grain Market and found several persons doing the business of Forward Contracts. He apprehended them and from them recovered note books, loose sheets, slips etc. All those persons were apprehended under Sections 41(2) and 109 of the Code of Criminal Procedure. However, a case under the provisions of the Forward Contracts (Regulation) Act, 1952 was registered on the following day. After completion of the investigation, separate challans were presented against different persons who were apprehended. The Trial Court framed charges under section 20(c) on 11 counts against Roshan Lal for entering into Forward Contract of mustardseed having been entered on August, 3, 1977. Roshan Lal was also charged under section 21(a) of the of Act and under Section 21(c) of the Act. PW1 Om Parkash and PW4 S.I. Yudhishter Lal deposed about the raid and apprehension of the accused. They also deposed about recovery of different articles as quoted above. PW2 R.N.

Aggarwal and PW3 N.D. Tilak, Senior Research Assistant, Forward Market Commission, Bombay, deposed about translation and interpretation of different documents recovered from the accused stating that such documents indicated trading in Forward Contracts of mustardseed with different persons. PW5 S.I. Balbir Singh deposed about the arrest of the accused in the present case. The accused while denying allegations of the prosecution pleaded that documents of other persons were being thrust upon him. He produced in defence Exhibit D1 and D2. Judicial Magistrate 1st Class Kaithal on October 23, 1982 acquitted the accused in all other cases. Hence the State has come up in appeal.

2. Section 22A of the Act provides for conducting raids under orders of the Magistrate by a Police officer not below the rank of Sub Inspector to search and seize books of accounts and other documents relating to Forward Contracts. Section 22B of the Act provides for raising a presumption in respect of such accounts taken into possession under orders of the Magistrate as provided under section 22 A of the Act. If raid is not conducted under orders of the Magistrate, then a duty is cast upon the prosecution to prove such documents independently and no presumption can be drawn as contemplated under section 22B of the Act. This was so held by the Full Bench of the Bombay High Court in *State of Maharashtra v. Jayantilal Popatlal Chandrani*, 1979 Criminal Law Journal 1231. After going through the provisions of the Act as referred to above, we are also of the same view. The contention of Shri Raghbir Chaudhary, A.A.G. appearing on behalf of the State that such a presumption should be drawn as contemplated under section 22B of the Act in the facts of the present case. cannot be accepted. As already stated above, the accused persons were arrested on a raid conducted on October 22, 1977 and a case was registered for committing offences punishable under sections 41(2) and 109 of the Code of Criminal Procedure, vide FIR Exhibit PW 4/A. From this report read with the evidence of PW4 S.I. Yudhishter Lal, it is quite clear that on receipt of information of the persons indulging in Forward Contracts, straightaway he went to the spot and apprehended the accused. He did not approach the Magistrate concerned to obtain warrants for search and seizure. Thus merely from the fact of taking into possession different documents from the possession of the accused which were subsequently translated and interpreted by the two experts PW2 R.N. Aggarwal and PW 3 N.D. Tilak presumption of entering into Forward Contracts, cannot be raised. The prosecution was expected to independently prove these documents to be executed by the accused. The prosecution having failed to lead any evidence in this respect, conviction of the accused under section 20(e) of the Act cannot be made. Subsection (c) of Section 20 provides punishment for entering into any Forward Contract against different provisions of the Act such as Sections 15,17 and 19 of the Act. The prosecution has thus failed to prove charges, framed on 11 counts against the accused with respect to entering into Forward Contracts on 381977.

3. Since the prosecution has failed to prove that any Forward Contract was entered into at the time of conducting the raid, the prosecution has thus failed to

establish the charge framed under section 21(a) of the Act or under section 21(c) of the Act.

4. Finding no merit in the appeals the same are dismissed.