
(1970) 03 SHI CK 0001
In the High Court Of Himachal Pradesh

State of Himachal Pradesh

APPELLANT

Vs

Shri Rama Mal

RESPONDENT

Date of Decision : 10-03-1970

Acts Referred:

Criminal Procedure Code, 1898 (CrPC) — Section 4(1)(w)
Essential Commodities Act, 1955 — Section 7, 8

Citation : (1970) CriLJ 1303

Hon'ble Judges : Om Parkash, J

Bench : Single Bench

Judgement

Om Parkash, J.—This order will dispose of criminal revision petitions Nos. 60, 61 and 62 of 1969.

2. The police had put up three separate challans, u/s 7, read with Section 8 of the Essential Commodities Act, 1955, against the respondent. The case for the prosecution was that Shri Kabul Singh, Inspector of Civil Supplies Department. Dharamsala, had, on the 19th October, 1967, raided the premises of Kishan Chand and Tej Ram situated in village Mitli and the premises of Kalu Bam in village Shekhpur and had recovered 75 bags of rice and 25 bags of gram from the premises of Kishan Chand; 75 bags of rice, 25 bags of gram and 28 bags of wheat from the premises . of Tej Bam and 50 bags of rice, 60 bags of gram and 15 bags of white gram from the premises of Kalu Ram. According to the prosecution, the aforesaid foodgrains had been stored by the respondent without a licence, as required by the Punjab Foodgrains Dealers" Licencing Order, 1964 and the Pun jab Rice Dealers" Licencing Order, 1964. The respondent was prosecuted for the contravention of the provisions of the aforesaid two orders and three separate challans were put against him.

3. The respondent had appeared in the three cases before the Magistrate first class on 20th May, 1968. The Magistrate first class had explained the accusation levelled against the respondent. The respondent had made the following statement:

I plead guilty, It is correct that I had in fact purchased 854 bags of foodgrains consisting of 200 bags of rice, 111 bags of black gram, 15 bags of white gram and 28 bags of wheat for sale on 18-10-1967 which I had stored at three different places taken on rent.... The Food and Supplies Inspector raided that place on 19-10-1967 and sealed the same. Subsequently the Police took into possession the entire stock.

I had applied for requisite licence for carrying on the business as Foodgrains Dealer, about 8 days before the purchase of the stock, which I had purchased in anticipation of the grant of that licence. I was under the impression that only the sale of foodgrains was prohibited by law and not its purchase, I, accordingly, made no sale nor did I intend to make any sale till the grant of licence.

The stock remained in Police custody right from 19.10-1967 till 16.5-1968 when I received it back on Superdari. During this period the entire stock, especially the gram has been highly damaged as also reduced in quantity. It has depreciated by about 50 per cent in value. I have already suffered loss of over Rs. 20,000 in this transaction.

4. The trial Magistrate convicted the respondent on the basis of the above statement, taking it as a plea of guilty of the offences for which the respondent was hauled up. The respondent was sentenced to undergo rigorous imprisonment for three months and to pay a fine of Rs. 2,000 in each case.

5. Aggrieved by the orders of the trial Magistrate, the respondent filed three appeals in the Court of Session, Kangra at Dharamsala.

6. The learned Sessions Judge held that the statement made by the respondent was not an unqualified admission of the offences for which he had been hauled up and that the trial Magistrate committed an illegality in treating the statement as a plea of guilty and convicting the respondent on the basis of his statement. The learned Sessions Judge further held that the trial Magistrate committed another illegality in trying the cases which were warrant cases as summons cases. On the basis of his findings, the learned Sessions Judge set aside the conviction of the respondent in all the three cases. He did not order retrial as in his view the respondent had already suffered the harassment of a trial and had also suffered heavy losses on account of the foodgrains having been deteriorated while in the custody of the Police.

7. The State has filed three criminal revision petitions against the order of the learned Sessions Judge.

8. It was contended by the learned Counsel for the State that the learned Sessions Judge was in error in holding that the statement made by the respondent did not amount to a plea of guilty. The contention has no substance. The statement made by the respondent has been reproduced in an earlier part of this order. It is clear from the perusal of the statement that though the respondent had stated that he pleaded guilty, yet he had set forth many

circumstances which exonerated him.

The respondent had stated that he had stored the foodgrains under the bona fide belief : that storage was not prohibited, but only sale was prohibited. The respondent had further stated he had applied for the licence for carrying on business as Food-grains Dealer about 8 days before the purchase of the foodgrains and that he had purchased the foodgrains in anticipation of the grant of the licence. The aforesaid circumstances tended to exonerate the respondent. The statement made by the respondent was not an unqualified admission of his guilt. It did not amount to a plea of guilty. The learned Sessions Judge was, therefore, right in holding that the trial Magistrate erred in treating the statement as plea of guilty and in basing the conviction on that statement.

9. Though in the grounds of revision, it was stated that the cases were summons cases, yet at the time of arguments the learned Counsel for the State conceded that the cases against the respondent were warrant cases and should have been tried as such. The respondent was hauled up for the contravention of the provisions of the Punjab Foodgrain Dealers Licencing Order, 1984 and the Punjab Rice Dealers" Licencing Order, 1964. These orders were promulgated in exercise of the powers, conferred by Clause (d), Sub-section (2) of Section 8 of the Essential Commodities Act. The imprisonment for the contravention of the above orders may extend to three years and fine, vide Section 7 (1) (a) (ii); Essential Commodities Act."

The cases filed against the respondent were, therefore, warrant cases within the meaning of Section 4 (1) (w), Code of Criminal Procedure and should have been tried as such, The trial Magistrate had adopted the mode of trial of summons cases and not of warrant cases. The trial of the cases was conducted in a manner different from that prescribed by the Code of Criminal Procedure. In such a situation, the trial is bad vide *Subrahmanya Ayyar v. King-Emperor* ILR (1902) Mad 61 and *Pullukuri Kottaya v. Emperor* AIR 1947 PC 67.

10. it was, next, contended by the learned Counsel for the State that the learned Sessions Judge grievously erred in not directing a retrial of the cases. The learned Sessions Judge has pointed out that the respondent had already faced a trial in the three cases and that he had suffered heavy loss because of the deterioration of the foodgrains." The foodgrains recovered had remained with the Police from 19-10-1967 to 16-5-1968. They had deteriorated in value to the extent of 50 per cent. The respondent had stated in his statement that he had suffered a loss of Rs. 20,000/- on account of the deterioration of the condition of the foodgrains. The respondent had also stated that he had applied for taking out licence as a Foodgrains Dealer and had purchased the foodgrains in anticipation of the grant of licence.

This statement indicates that the respondent had no intention to violate the provisions of the aforesaid two orders. *Mens rea* is an essential ingredient of an offence u/s 7 of the *Nathulal Vs. State of Madhya Pradesh*, . In the present case

mens rea was lacking. Keeping in view all the circumstances of the case, it will not be just for this Court to interfere with the orders of the learned Sessions Judge in exercise of the revisional powers of this Court.

11. No other point was urged in the revision petition which are dismissed.