
(1979) 03 BOM CK 0023
In the Bombay High Court
Case No : Criminal Appeal No. 775 of 1977

State of Maharashtra

APPELLANT

Vs

Nanji Karamshi Chheda and Others

RESPONDENT

Date of Decision : 12-03-1979

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (1979) 03 BOM CK 0023

Hon'ble Judges : P.B. Sawant, J

Bench : Single Bench

Advocate : A.G. Deshmukh, for accused Nos. 1 and 2, H.A. Solkar, P.P, for the Appellant;

Judgement

P.B. Sawant, J.—The short point that arises for decision in this appeal against acquittal is whether the accused could be said to be dealers within the meaning of the Maharashtra Gur and Khandasari Dealers Licensing Order, 1963 (herein after referred to as the said Order).

2. The admitted facts are that on 12th March, 1975, the Deputy Controller of Rationing arranged a raid on a firm called Ganesh Trading Company at Byculla, of which the accused are partners. A bogus customer named, Chandrakant was sent to purchase jaggery. In the presence of panchas, he was given a marked note of Rs. 5/- to buy 2 Kgs. of jaggery from the said shop and a panchanama to that effect was made. The bogus customer purchased 2 Kgs. of jaggery and thereafter gave a signal to the riding party, pursuant to which the riding party seized the gur as well as the marked currency note under a panchanama. They also searched the shop of the accused and found that there was a stock of about 15,000 Kgs. of jaggery. The accused had no licence to trade in the commodity. Hence they were charge-sheeted and prosecuted before the learned Metropolitan Magistrate, 25th Court, Mazgaon, for the offence u/s 7 of the Essential Commodities Act read with clause 3 of the said order.

3. The accused admitted that they had a stock of 15,000 Kgs. of Jaggery and

that they had sold on the date in question 2 Kgs. of jaggery to Chandrakant. However, they contended that they were not dealers within the meaning of the said order. The learned Magistrate accepted the defence and relying upon a decision of the Supreme Court reported in Manipur Administration Vs. M. Nila Chandra Singh, acquitted the accused of the said offence. It is aggrieved by the said order dated 19th October, 1976, that the State has preferred the present appeal.

4. Mr. Solkar, the learned Counsel appearing for the State relied upon sub-clause (3) of clause 3 of the said order and contended that the said sub-clause (3) raises a presumption that whoever holds a stock of gur exceeding 25 Kgs. at any one time would be deemed to store the gur for the purpose of sale. He, therefore, contended that the accused were duty bound to hold a licence under sub-clause (1) of the said Clause 3, and in as much as, they were carrying on the business of selling gur without a licence they had contravened the said order and, therefore, they were liable to be convicted u/s 7 of the Essential Commodities Act.

5. It appears that the department concerned, has not noticed the decision of the Supreme Court referred by the learned Magistrate in his judgment . Although that decision was given under the Manipur Food Grains dealers Licensing Order, 1958, the language of the clauses that came to be construed in the said decision are pari-materia with the language of the clauses that fell for consideration in the present case. It has been in terms held by the Supreme Court that before a person is hauled up for carrying on business as a dealer without a licence, it must be proved that the person is a dealer with the meaning of the said order. Sub-clause (a) of Clause 2 of the said order defined dealers as follows :

6. "Dealer" means a person engaged in the business of purchase, sale or storage for sale or gur or Khandsari in quantities exceeding 250 quintals at any one time and includes a commission agent, who holds stock of Gur or Khandsari for sale in the conduct of his business. Sub-clause 3 then provides Licensing of Dealers and the same reads as follows :---

"(1) No person shall carry on business as a dealer except under and in accordance with terms and conditions of a licence issued in this behalf by the licensing authority.

(2) A separate licence shall be necessary for each place of business.

(3) For the purpose of this clause, any person who stores gur or Khandsari in any quantity exceeding 250 quintals at any one time shall, unless the contrary is proved, be deemed to store the gur or Khandasari, as the case may be, for the purpose of sale."

It will be apparent from the definition of the dealer that at any one time the person concerned must purchase, sale or store for sale gur exceeding 25 quintals. In other words if the person engaged in transactions whatever their

number which do not at any one time exceed 25 quintals such a person would not be covered by the definition of dealer and, therefore, would be outside the purview of the said order. It is not disputed in this case that the transaction of sale in favour of the bogus customer was only for 2 Kgs. of gur. On the plain wording of the said definition itself, therefore, the accused could not by any stretch of imagination be held to come within the purview of the said definition.

7. However, the argument was that sub-clause (3) of Clause 3 of the said order raises a presumption that where a person holds stock of quantity exceeding 25 quintals at any one time, it would be deemed that he had stored such gur for the purpose of sale unless the contrary is proved. Now it must be remembered in this connection that the said presumption is a presumption for the purpose of holding that the stock is meant for storage or sale. It is true that in the present case the accused were found with a stock of no less than 15,000 Kgs. and, therefore, the presumption that the said stock was meant for sale would properly be raised under the said sub-clause (3) of Clause 3. However, it is not sufficient for the purposes of sub-clause (3) that a person holds a stock for sale what is required to be proved is that he holds such stock for carrying on business as a dealer. Apart from the fact that a solitary transaction of sale, purchases or stock will not bring a person within the purview of Clause 3, as has been pointed out earlier each of such transactions whatever their numbers must be of quantities exceeding 25 quintals at any one time. Admittedly, the only act for the commission of which the accused have been hauled up in the said transaction of sale of 2 Kgs. of gur in favour of the bogus customer. Hence the prosecution was completely unwarranted in the present case. The order of acquittal passed by the learned Magistrate is, therefore, fully justified and in fact the prosecution could not be said to have been launched after pursuing the provisions of the said order.

8. In the result, the appeal fails and the order of acquittal is confirmed.

9. The bail bonds of the accused to stand cancelled.