(1998) 10 BOM CK 0061

In the Bombay High Court

Case No : Criminal Writ Petition No. 983 of 1991 with Criminal Writ Petition No. 1113 of 1993

Sudhakar Shridhar Sumant and others — APPELLANT

Vs

Shetkari Sahakari Sakhar Karkhand Limited, Sangli and others — RESPONDENT

Date of Decision : 15-10-1998

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 10, 7
Maharashtra Sugar Factories (Reservation of Areas and Regulation of Crushing and Sugarcane Supply) Order, 1984 — Section 3(2), 4(1)

Citation : (1999) 5 BomCR 771

Hon'ble Judges : T.K. Chandra Shekhara Das, J

Bench : Single Bench

Advocate : R.V. More, for the Appellant; A.G. Prabhu and S.R. Shinde, Assistant Public Prosecutor, for the Respondent

Judgement

T.K. Chandra Shekhara Das, J.—The writ petitioners are the agriculturists raising sugarcane cultivation. They have to supply sugar cane to Kisan Ahir Sahakari Sakhar Karkhana Limited, Walva. While supplying the sugarcane to the said Karkhana, it is alleged that they have contravened the provisions of Maharashtra Sugar Factories (Reservation of Areas of Regulation of Crushing in Sugarcane Supply) Order, 1984 (hereinafter called the Order of 1984). The Special Judge, Sangli under Essential Commodities Act had framed the charge against them as follows:-

"That you all on 5-1-1986 at or about 19.30 hours within the limits of village Mouje fung in furtherance of your common intention found transporting sugarcane belonging to accused Nos. 3 & 4 through tractor N.X.W. 533, trolly No. 3308, 3309 unauthorizedly from the area reserved for the factory which comes under Sangli Shetkari Sahakari Karkhana, Sangli and you transported the said sugarcane to the factory named Hutatma Kisan Ahir Sah. Sakhar Karkhana and thereby contravened the provisions of section 3(2), 4(1) of Maharashtra Sugar Factories Order, 1984 and thereby committed an offence punishable u/s 7 and 10(a) Essential Commodities Act, 1955 and within my cognizance."

2. It is alleged that they are punishable u/s 3 of that Order. The sub-clause (3) of the said Order is extracted below:-

3. Reservation of areas :---(i) Having regard to the crushing capacity of sugar factories and, the yield of sugarcane in the reserved areas, and the need of production of sugar, the area as specified in each of the schedules is hereby reserved for the factory mentioned in that schedule with a view to enabling it to purchase the quantity of sugarcane required by it.

This order has been amended by another Notification issued by the Government of Maharashtra on 14-1-1988 wherein Clause 14 has been inserted. The said Clause 14 of the amended Order reads as follows:-

14. Penalty :---Any person who contravenes any of the provisions of this Order or of the terms and conditions of a licence, permission or permit granted under this Order shall be punishable u/s 7 of the Essential Commodities Act, 1955.

3. Even though various contentions has been raised by the Counsel of the petitioner, he concentrated his argument on one point. He submits that under the provisions of 1988 Order no prosecution can be initiated against them because 1984 Order is not passed under the provisions of Essential Commodities Act. As is evident from the Preamble of the said Order it is clear that the 1984 Order has been passed in exercise of the powers conferred by para (a), (e) and (f) of sub clause (1) of Clause 6 and sub clause (a) of Clause 9 of Sugarcane (Control) Order, 1966 read with Notification of Government of Bombay, Ministry of Food, Agriculture and Co-operation Department dated No. G.S.R. 1127/Ess. Com./ Sugarcane dated 16-7-1966. The contention of the learned Counsel for the petitioner precisely is that the Sugarcane (Control) Order, 1966 though passed under the Essential Commodities Act, the 1984 Order of the Maharashtra Government was not passed under the Essential Commodities Act so as to invoke the penalty clause of section 3 of the Essential Commodities Act. Therefore no prosecution can be launched based on this order for the violation of the provisions of 1984 Order.

4. I find considerable substance in the contention of the learned Counsel for the petitioner. It is true that Sugarcane (Control) Order, 1966 was passed under the provisions of the Essential Commodities Act, but 1984 Order was authorized to be passed only under the Sugarcane (Control) Order. The contention of the learned Counsel is that even though the Government of India has passed Sugarcane Order 1966 by invoking the provision of Essential Commodities Act, the order passed as authorized by 1966 Order cannot delegate that power under Essential Commodities Act. Therefore the prosecution is without any jurisdiction. As noted earlier there is really a lacuna in 1984 Order. No doubt sugarcane is a commodity notified under Essential Commodities Act. Section 3 is authorizing the

State Government to make any order regulating by licence, permission or otherwise the storage, transport, distribution, disposal, accusation, use and consumption of any Essential Commodity. Section 7 of the Essential Commodities Act prescribe the penalty for having violated any provisions of the Act or any provisions of the Order made under the said Act. The learned Counsel argues that so long as 1984 Order does not prescribe that prosecution can be launched under the Essential Commodities Act, no penalty u/s 7 of the Act could be invoked against the petitioner. Mr. More, Counsel for the petitioner further fortifies his argument in bringing my notice an amendment brought by the Government of Maharashtra to fill in this lacuna. It is issued on 14-1-1988. In that Notification clause 14 has been newly added to bring in the operation of the Essential Commodities Act in case of any violation of the Sugarcane (Control) Order. The learned Counsel argued that by bringing the amendment the Maharashtra State is conceding that when the prosecution is launched against the petitioner it has no authority to invoke the provision of the Essential Commodities Act. I find considerable force in the argument in view of the legal position contended by the Counsel for the petitioner. Though the Sugarcane Control Order, 1966 authorizes the State Government to frame rules, that rules does not actually authorize the State Government to invoke the provision of the Essential Commodities Act. The rule of 1986 issued by the Government of Maharashtra does not mention about invoking of the provision of section 7 of the Essential Commodities Act. Only the said amendment was brought in 1988. Admittedly prosecution in this case was initiated before January 1988. Prosecution against the petitioner therefore suffers from lack of competency. The prosecution against the petitioner is therefore liable to be quashed as the offence is said to have been committed before 1988.

In the result the writ petition is allowed. The rule made absolute in terms of prayer clause (b).

Prayer clause (b):-

The criminal proceedings initiated at the instance of the respondent No. 1 against the petitioners being Special Case No. 7/1987 pending before the III Additional Sessions Judge at Sangli be quashed and set aside.

5. Writ petition allowed.

