

(1977) 08 GUJ CK 0033
In the Gujarat High Court

Swastik Oil Industries

APPELLANT

Vs

State of Gujarat and Another

RESPONDENT

Date of Decision : 26-08-1977

Acts Referred:

Constitution of India, 1950 — Article 227

Essential Commodities Act, 1955 — Section 3, 6A, 6A, 7

Citation : (1978) 19 GLR 1117

Hon'ble Judges : A.M. Ahmadi, J

Bench : Single Bench

Judgement

A.M. Ahmadi, J.—This is a petition under Article 227 of the Constitution of India by a partnership firm trading in the name and style of Swastik Oil Industries, which held a licence under the Gujarat Groundnut Dealers Licensing Order, 1966, to carry on business in groundnut oil. The premises of the firm were inspected on 10th July, 1976 by the District Supply Officer, Kaira and 397 tins of ground-nut oil were seized and, intimation thereof was given to the Collector of Kaira immediately. Thereafter a show cause notice was issued calling upon the petitioner firm to show cause why these tins of ground-nut oil should not be confiscated to the State. In the show cause notice, 9 grounds were set out for confiscation of the ground-nut oil tins to which the petitioner sent replies on 16th September, 1976 and 17th September, 1976. The petitioner was then given an opportunity of personal hearing on 4th October, 1976 and upon a consideration of the material placed before him, the Collector of Kaira, came to the conclusion that the explanations furnished by the petitioner ground-wise could not be accepted. He came to the conclusion that the petitioner firm had committed grave irregularities and breaches of the conditions of the licence as well as the provisions of the order under which the licence was issued and, therefore, he directed the confiscation of 100 tins, out of the total number of 397 tins seized on 10th July, 1976. Against this order passed by the Collector of Kaira, the petitioner-firm filed an Appeal No. 144/76 in the court of Sessions Judge, Kaira at Nadiad. That appeal was heard by the learned Additional Sessions Judge, Kaira at

Nadiad on 15th December, 1976. The learned Additional Sessions Judge came to the conclusion that except for ground No. 2 set out in the show cause notice, the petitioner firm had not been guilty of any breach in respect of the remaining grounds. He came to the conclusion that Clause (II) of the Licensing Order had been contravened but such contravention was not deliberate as it arose out of a mere bona fide misconception regarding the true content of Clause (II) of the said Licensing Order. He took into consideration the fact that in the past also the business premises of the petitioner-firm had been inspected from time to time and even though no separate register of transactions in ground-nut oil with bulk consumers showing therein the names, addresses and such other particulars, as the Licensing Order may specify, was maintained, no note thereof was taken and the petitioner-firm was not directed on those occasions to maintain such a register. The learned Additional Sessions Judge expressed himself on this point as under:

It is pertinent to note that the business carried on by the appellant was inspected from time to time in the past by the authorities concerned. At that time the appellant was not told about the imperative need to maintain separate registers as required by clause II. It appears that the appellant was belabouring under a bona fide impression that as it has maintained a stock register and as such and every transaction entered into by it has been supported by separate bills showing therein the names, address, etc. it has not to maintain any separate list. It appears that this erroneous but bona fide belief became strong in view of the fact that it was never told at the time of inspections-which were made in the past before 10-7-76 that it has committed a breach by not maintaining the registers, as required by Clause 11. It is, therefore, not possible to attribute any criminal intention to the appellant so far as this particular breach is concerned.

The learned Additional Sessions Judge, therefore, came to the conclusion that clause II of the Licensing Order was contravened but such contravention was merely a technical bona fide contravention and not a contravention wilfully and deliberately made with a view to earning profit. Taking cue from the case of *M. Samappa v. State of Mysore* 1970 Cri. Law Journal 929, the learned Additional Sessions Judge came to the conclusion that in the circumstances the order confiscating 100 tins of ground-nut oil was clearly harsh and the ends of justice would be met if 25 tins were confiscated. It is this order made by the learned Additional Sessions Judge in appeal, which is sought to be assailed in this petition under Article 227 of the Constitution.

2. Encouraged by this definite finding recorded by the learned Additional Sessions Judge, the learned Advocate for the petitioner argued that whenever a statute creates an offence the element of mens rea must be read in the statute, unless a contrary intention is expressed or implied. According to him as a general rule every crime requires a mental element and unless the language of the statute in unmistakable language either expressly or by necessary implication excludes it, proof of the existence of such mental element is a sine-qua-non to a

conviction. In support he relies on the decision of the Supreme Court in *Nathulal v. State of Madhya Pradesh* AIR 1966 S.C. 43, a case in which while interpreting Section 7 of the Essential Commodities Act, 1955, hereinafter called "the Act" the Supreme Court held that considering the scope of the Act it would be legitimate to hold that an offence u/s 7 of the Act is committed by a person if he intentionally contravenes any order made u/s 3 of the Act. In other words the Supreme Court in terms read mens rea as an essential ingredient of the criminal offence referred to in Section 7 of the Act. Seeking support from this pronouncement of the Supreme Court it was submitted on behalf of the petitioner that both Section 6A and 7 of the Act cover the same field, inasmuch as both the aforesaid provisions speak of contravention of an order made u/s 3 of the Act, with the difference in punishment only, in that, the former speaks of confiscation of the essential commodity while the latter provides for imprisonment and fine. The submission therefore is that since both the provisions are in pari materia, if according to the view of the Supreme Court the element of a guilty mind is required in case of an offence u/s 7 of the Act, the same requirement must be read in Section 6A of the Act also. Ex facie the argument appears to be weighty but it does not stand close scrutiny as it totally overlooks the legislative changes introduced after the Supreme Court decision in *Nathulal's* case (*supra*).

3. The material part of Section 7 of the Act initially provided that it shall be an offence "if any person contravenes any order made u/s 3" of the Act. However, soon after the decision of the Supreme Court in the above-mentioned case, with a view to making the provisions more stringent and their implementation effective and in order to prevent persons committing Offences under the Act from escaping punishment on the plea that the offences were not committed deliberately, Sub-section (1) of Section 7 was amended by Ordinance 6 of 1967 with effect from September 16, 1967 which was later replaced by Act 36 of 1967 whereby the words "whether knowingly intentionally or otherwise" were added between the word "contravenes" and the words and figure "any order made u/s 3." The plain reading of the section after its amendment made it clear that by the amendment the legislature intended to impose strict liability for contravention of any order made u/s 3 of the Act. In other words by the use of express words the element of mens rea as an essential condition of the offence was excluded so that every contravention whether intentional or otherwise was made an offence u/s 7 of the Act. Thus by introducing these words in Section 7 by the aforesaid statutory amendment the legislature made its intention explicit and nullified the effect of the Supreme Court dicta in *Nathulal's* case. But again in the year 1974, pursuant to the recommendations of the Law Commission in their 47th Report and the experience gained in the working of the Act, by an ordinance, Section 7 of the Act was amended whereby the words "whether knowingly, intentionally or otherwise" which were introduced by Amending Act 36 of 1967 were deleted and the material part of Section 7(1) restored to its original frame and a new provision in Section 10 of the Act was added which reads as under:

10.C.(1) In any prosecution for any offence under this Act which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation: In this section, "culpable mental state" includes intention, motive, knowledge of a fact and the belief in, or reason to believe, a fact. (2) For the purposes of this section, a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

This Ordinance was replaced by Amending Act 30 of 1974. The effect of this subsequent change in the statute is that a presumption of guilty mind on the part of the accused in respect of offences under the Act, including Section 7, would arise and it would be open to the accused to rebut the same. As the law now stands in any prosecution under the Act which requires a culpable mental state on the part of the accused, the same must be presumed unless the accused proves that he had no such mental state with respect to the offence for which he is tried. Now according to the explanation to Section 10C culpable mental state includes intention, motive, knowledge of a fact and belief in or reason to believe a fact. The degree of proof expected to rebut the presumption has been indicated by Sub-section (2) thereof which says that a fact will be said to be proved only if it exists beyond reasonable doubt and it will not be sufficient to prove its existence by preponderance of probability. Thus the burden of proof lies heavily on the accused to rebut the statutory presumption and the degree of proof expected is that required for the proof of a fact by the prosecution. There can therefore be no doubt that the aforesaid legislative changes have reversed the thrust of the decision of the Supreme Court in Nathulal's case (supra) and the same no longer holds the field.

4. Mr. Ravani, the learned advocate for the petitioner, however, contended that even though in view of the above discussed statutory changes mens rea may no longer be required to be proved by the prosecution in an offence u/s 7 of the Act, the need to establish a guilty mind u/s 6A of the Act subsists as that provision has not been basically altered in content and operates in the same field in which Section 7 operated before its amendment. Mr. Ravani, therefore, argued that the decision of the Supreme Court in Nathulal's case is still valid for determining the scope of Section 6A of the Act. This contention is, as I will presently show, clearly misconceived. At the outset it must be remembered that Section 6A creates a quasi-criminal liability unlike Section 7 which creates a truly criminal liability. Obviously, therefore, the degree of proof required to bring home the guilt against the accused u/s 7 should be greater than the degree of proof required u/s 6A of the Act. This would not be so if mens rea is read in Section 6A of the Act. If the newly added Section 10C of the Act has no bearing on the content of Section 6A, and it is not submitted that the said provision would be attracted to an enquiry u/

s 6A, there can be no doubt that if mens rea is read as an essential ingredient of Section 6A the degree of proof required for a comparatively lesser offence would be greater than the degree of proof required in a case where the liberty of an individual is at stake. Such an intention cannot be attributed to the legislature for obvious reasons. It would therefore appear that the legislature advisedly did not amend Section 6A of the Act as the desired result was achieved by amending Section 1 in the first place and later adding Section 10C to the Act. The above discussion clearly leads me to think that the impact of the amendment of Section 7 on Section 6A is that by necessary implication it becomes Clear that the legislature did not intend that mens rea should be read as an element of Section 6A of the Act.

5. It is not unusual for the legislature to impose strict liability in relation to offences which are not truly criminal. In determining whether or not such liability is intended by the legislature regard shall be had to the language of the statute, the nature of the mischief sought to be curbed, the character of the offence and protection of public interest. The offence u/s 6A is clearly a quasi-criminal one. There is nothing in the language of the relevant part of Section 6A of the Act to indicate that the legislature intended that mens rea should be read as an essential ingredient of that offence. On the contrary, as pointed out earlier, the subsequent changes made in the statute clearly indicate that the legislature did not intend that mens rea should be read in Section 6A of the Act. In truly criminal cases the mere fact that the object of the statute is to promote welfare activities or to eradicate a grave, social evil may not be decisive, but the same consideration may not apply in a quasi criminal offence, and it may be inferred, provided other circumstances do not point otherwise, that the legislature intended to create strict liability so that the purpose of the Act is not frustrated. The Act was enacted in the interest of the general public for the control of the production, supply and distribution of essential commodities. The object of the Act is to ensure production and equitable distribution of essential commodities in larger public interest. With that end in view, Section 3 empowers the Central Government to provide (by order) for regulating or prohibiting the production, supply and distribution of essential commodities whenever it considers the same necessary or expedient, for maintaining or Increasing supplies of any essential commodity or for securing not only equitable distribution but also availability of such commodity at fair prices. It is to achieve this objective that Section 6A provides for confiscation of the essential commodity if the Collector is satisfied of contravention of the order made u/s 3 of the Act. The legislature has advisedly left a wide discretion in the Collector in the matter of ordering confiscation and in fit cases he may make a nominal confiscation order. Thus having regard to the ultimate objective of the Act and the legislative intent made clear by the subsequent amendments in Section 7 of the Act it is difficult to hold that mens rea is an essential element of the offence u/s 6A of the Act, which is only a quasi-criminal offence. As discussed earlier the legislature cannot be attributed with the intention of providing a higher degree of proof in a quasi-criminal offence as

compared to the degree of proof expected from the prosecution in a purely criminal offence u/s 7 of the Act. Hence the order cannot be assailed on this ground.

6. It is not in dispute that the petitioner-firm contravened the requirement of clause II of the licensing order. Even the learned Additional Sessions Judge has come to the conclusion that there has been a technical contravention and hence the Collector was entitled to order confiscation of the oil seized u/s 6A of the Act. Against the order passed by the Collector confiscating 100 oil tins, the petitioner firm preferred an appeal by virtue of Section 6C of the Act and the learned Additional Sessions Judge, who heard the appeal, came to the conclusion that as the breach was merely technical, "the confiscation order was harsh and required to be modified". He also came to the conclusion, relying on the judgment of the Mysore High Court (*supra*) that the ends of justice would be met if the order of the Collector is modified, in that, instead of the confiscation of 100 oil tins, confiscation of 25 oil tins be ordered. The question then is whether this Court would be entitled to interfere with the exercise of discretionary power of the learned Additional Sessions Judge in this petition under Article 227 of the Constitution. The law in this regard is well settled and has been reiterated in *Trimbak Gangadhar Telang and Another Vs. Ramchandra Ganesh Bhide and Others*, . The Supreme Court has observed in para 3 of the judgment in this petition as under:

It is a well-settled rule of practice of this Court not to interfere with the exercise of discretionary power under Article 226 and 227 of the Constitution merely because two views are possible on the facts of a case. It is also well established that it is only when an order of a Tribunal is violative of the fundamental basic principles of justice and fair play or where a patent or flagrant error in procedure or law has crept or where the order passed results in manifest injustice, that a court can Justifiably intervene under Article 227 of the Constitution.

These observations clearly apply to the facts of the present case and I am of the opinion that this Court would not be justified in interfering with the discretionary order passed by the learned Additional Sessions Judge, Nadiad. However, even if I were inclined to interfere I do not think that the order passed by the learned Additional Sessions Judge, Kaira, confiscating 25 ground-nut oil tins, is harsh or disproportionate to the contravention. Therefore, even on merits, I would have been disinclined to interfere with that order.

No other submission was made before me. In view of the above discussion, this petition fails and is dismissed. Rule discharged.