
(1991) 02 KAR CK 0032
In the Karnataka High Court
Case No : Criminal Appeal No. 745 of 1987

The State of Karnataka	Vs	APPELLANT
D.S. Krishnaiah Setty, Bangalore		RESPONDENT

Date of Decision : 15-02-1991

Acts Referred:

Essential Commodities Act, 1955 — Section 3, 7

Citation : (1992) CriLJ 1641 : (1991) ILR (Kar) 1533 : (1991) 2 KarLJ 50

Hon'ble Judges : B.P. Singh, J;B.N. Krishnan, J

Bench : Division Bench

Advocate : Mr. S. R. Bannurmah, Addl. State Public Prosecutor, for the Appellant; M/s S. Shankarappa and Vipin Kumar Jain, for the Respondent

Judgement

B.P. Singh, J.—The State of Karnataka has preferred this appeal only on the question of sentence making a grievance that the learned Special Judge, Metropolitan Area, Bangalore city, while finding the respondent guilty of contravening clause 3 of the Karnataka Pulses Dealers Licensing Order, 1977, which was punishable under S. 3 read with S. 7 of the Essential Commodities Act, 1955, has sentenced the respondent only to pay a fine of Rs. 1,000/- and in default to undergo simple imprisonment for a period of three months. The State contends that a substantive sentence ought to have been passed in the facts and circumstances of the case. The respondent on the other hand contends that his conviction itself is unjustified and, therefore, he contends that there is no justification for enhancement of the sentence and that the conviction itself should be set aside.

2. It is not in dispute that the respondent is a licensee under the Karnataka Pulses Dealers Licensing Order, 1977. He carries on business in the name and style of Subramanyeswara Trading Company. The case of the prosecution is that on credible information received by P.W. 1 Sub-Inspector of Police in the Directorate of Enforcement, Food and Civil Supplies, Bangalore, that the accused was dealing in pulses by storing pulses in a godown in which he was not

authorised under the licence to store pulses and that he was not maintaining proper accounts, a raid was arranged at about 3.00 p.m. on 13-2-1986. When the raiding party went to the shop premises of respondent No. 1, one T. R. Suresh (since acquitted) was found in the shop. He produced the stock book, the bill book, as also copy of fortnightly return, which are required to be submitted to the Department in accordance with the conditions of the licence. He took the sub-Inspector P.W. 1 to a godown bearing No. C-132 situate in Beerayyadevaragudi Cross, Jali Mohalla, behind the licenced shop and after opening the lock of that godown, he took the raiding party inside and showed them different varieties of pulses kept in that godown. According to the prosecution, the verification of the different varieties of pulses kept in the godown disclosed that the storage of pulses was unauthorised and that there was excess stock of different varieties of pulses than what was in the stock book as the opening balance on that day. The excess was to the extent of 1,294 kgs. Accordingly, the pulses were seized under the panchanama Ex. P-1.

3. The respondent as well as the aforesaid T. R. Suresh were tried by the Special Judge, Metropolitan Area, Bangalore, in C.C. No. 37/1986 and by a Judgment and Order D/- 3rd of August, 1987, the learned Special Judge while acquitting T. R. Suresh of the charges levelled against him, found the respondent guilty of the offence punishable under S. 3 read with S. 7 of the Essential Commodities Act, 1977, and sentenced him to pay a fine of Rs. 1,000/-. The only ground which found favour with the learned Special Judge was that though the respondent No. 1 had intimated to the office of the Deputy Director, Food and Civil Supplies, vide Ex. D-6 which was received in the office on 10th February, 1986, that he had stored the pulses in a different godown, the Department had not granted the prayer made in Ex. D-6 to store the pulses in that godown, even on 13-2-1986 when the raid was conducted and the pulses seized in the other godown. It may thus be seen that the sole ground on which the conviction of the respondent is based is that the request made by him in Ex. D-6 had not been granted by the authorities and, therefore, the storage of the pulses in the unauthorised godown was illegal. This amounted to a contravention of the conditions of the licence, particularly Clause 3 thereof which enjoined all licenses to carry on business as a dealer in accordance with the terms and conditions of the licence issued in that behalf. Since a condition of the licence had been breached, it amounted to a contravention of Clause 3 of the Order and, therefore, punishable under S. 3 read with S. 7 of the Essential Commodities Act.

4. Clause 3 of the Pulses Control Order, 1977, no doubt provides that no person shall after the 6th December, 1977 carry on business as a dealer in pluses, except under and in accordance with the terms and conditions of the licence issued in that behalf by the licensing authority. The licence issued to the respondent No. 1 appears to have been returned to him and is not on record. The learned Public Prosecutor, however, submitted that all the licences are issued in Form B which is a part of the Control Order. Condition No. 2(b) of the licence provides as follows :-

"Pulses shall not be stored at any place other than any of the godowns mentioned below :-

.....
.....

Note - If the licensee intends storing his stock of pulses in places other than these specified above, he shall give prior intimation and in case where it is found difficult to give prior intimation to the licensing authority, intimation of taking over godowns for storage in such cases should be given to the licensing authority within forty eight hours of the actual occupation of the godown and in either case, the licensee shall produce the licence for making requisite changes by the licensing authority."

It will thus be apparent that a licensee must normally store the commodities in the premises mentioned in the licence. However, if he intends storing his stock of pulses in a place other than the one specified in the licence, he is required to give prior intimation, and in the event it is found difficult to give prior intimation to the licensing authority, intimation of taking over godown for storage has to be given to the licensing authority within forty-eight hours of the actual occupation of the godown. In any case, the licensee is required to produce the licence for making the requisite changes by the licensing authority. The note to condition 2(b) of the license therefore, permits a licensee to store the commodities in a place other than the one mentioned in the licence, but obliges him to give prior intimation of his doing so. In cases where a licensee may not be in a position to give advance intimation, and one can visualize large number of situations in which it may not be possible for the licensee to give advance intimation, the licensee is required to intimate the authorities about his having stored the commodities in another godown within forty-eight hours of the actual occupation of the godown. The obligation on the part of the licensee is to intimate the occupation of another godown within forty-eight hours. Once that intimation is given to the authorities concerned, the condition of the licence is fulfilled and the licensee cannot be said to have committed a breach of condition 2(b) of the licence. Having done so, the licensee must in due course produce the licence before the concerned authority for making requisite changes in the licence. The licence does not prescribe any particular period within which this has to be done and, therefore, it must be understood to mean that the licensee must thereafter, produce the licence for necessary changes within reasonable time. One thing is however, quite apparent and that is that the note only requires the licensee to give intimation of his having occupied another godown for storage of goods. There is nothing in the note to indicate that thereafter the authorities are required to grant or refuse the request. The requirement is only of giving intimation and nothing more.

5. In the instant case, it is not disputed before us that the licensee did give intimation Ex. D-6. That intimation was received in the office of the Deputy Director Food and Civil Supplies on 10th February, 1986. Within three days

thereafter, there was a search of the godown and seizure of pulses on 13th of February, 1986. The learned Special Judge has found that the intimation no doubt was given as per Ex. D-6 but the Department had not granted the prayer made in Ex. D-6. In our view, the note to condition 2(b) of the licence obliges the licensee to give intimation only and there is nothing in any of the conditions of the licence to indicate that the permission has thereafter to be granted or that storage in such godown will be illegal if done without such permission. In fact, the grant of permission is not envisaged by the note to condition 2(b) of the licence because in the very nature of things, if the intimation has to be given after the godown is occupied, obviously the very storage is authorised and it will not become illegal merely because the authorities fail to pass any formal order granting the permission or refusing such permission. The object of the note to condition 2(b) of the licence is to keep the authorities informed about the storage of essential commodities by a licensee so that the authorities may exercise effective control over the commodities. In our view, therefore, the learned Special Judge erred in law in thinking that after intimation was given to the authorities pursuant to condition 2(b) of the licence, the licensee should have waited for grant of permission, and that in the absence of such permission being granted, there was a breach of the condition of the licence. The only reason given for holding the respondent guilty, does not appear to us to be sound.

6. There is one other reason why the conviction of the respondent cannot be sustained. There is no evidence to show that the storage in the other godown was by the respondent. Admittedly, on the date in question, when the raiding party went to the shop of the respondent, he was not there. One T. R. Suresh who was in the shop took the raiding party to that other godown. We also find from the records that the seized goods were released to that T. R. Suresh and not to the respondent herein. There is no evidence to show that the storage of the commodities in the other godown was by the respondent herein. Having regard to the evidence on record, the possibility cannot be ruled out that the storage in the other godown was by the other accused, viz. Sri T. R. Suresh who has been acquitted by the learned Special Judge. This also furnishes a good ground for the acquittal of the respondent.

7. In this view of the matter, we find that the learned Special Judge erred in law in convicting the respondent. We find that the respondent is not guilty of having committed breach of any of the conditions of the licence issued to him under the Pulses Control Order. We, therefore, while dismissing this appeal preferred by State set aside the conviction of the respondent, and direct that the amount of fine if paid by him shall be refunded to him.

8. Appeal dismissed.