
(1976) 04 BOM CK 0022
In the Bombay High Court
Case No : Criminal Appeal No. 179 of 1975

The State of Maharashtra

APPELLANT

Vs

Morarji Hirji Maru

RESPONDENT

Date of Decision : 12-04-1976

Acts Referred:

Essential Commodities Act, 1955 — Section 1, 3, 7, 8

Citation : (1976) 78 BOMLR 289

Hon'ble Judges : Dharmadhikari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Dharmadhikari, J.—This appeal has been filed by the State Government for enhancement of sentence. The accused-respondents were prosecuted for having committed an offence punishable under Sections 7 and 8 of the Essential Commodities Act, 1955, hereinafter referred to as the Act. On August 12, 1972 inspector Purohit on information visited the Galas 6 and 7, 8 Galli and found that the accused had stored ninety-two bags of wheat in those Galas. According to the prosecution, as per the licence issued to the accused, the accused were not authorised to store the foodgrains at the places other than those mentioned in the licence and admittedly these places were not the one authorised by the said licence. The accused pleaded not guilty to the charge and contended that they had filed proper returns to the rationing authority. According to them, the bags of wheat were duly accounted for in their account book. They admitted that about ninety-two bags of wheat were kept at a place other than those mentioned in the licence, but they explained further that the bags of wheat were kept in transit. The accused further admitted that they had not notified about change of place within forty-eight hours.

2. After appreciating all the evidence on record, the learned Metropolitan Magistrate, 25th Court, Mazgaon, Bombay, came to the conclusion that the accused had committed breach of condition No. 2 (b) of the licence. In view of

this, he found them guilty and sentenced them to pay a fine of Rs. 100 each, or in default to suffer simple imprisonment for fifteen days. The learned Metropolitan Magistrate further directed that the amount of Rs. 9,450 with interest, deposited in the State Bank of India, be returned to the accused. So far as this latter part of the order is concerned, the State Government has filed a separate revision application in that behalf and, therefore, it is not necessary to deal with that aspect of the matter in this appeal.

3. Shri Gumaste, the learned public prosecutor for the appellant-State, contended before me that having found the accused guilty of the offence u/s 7 of the Act, the learned Metropolitan Magistrate has committed an error in imposing only a nominal sentence of fine. He further contended that the offence of black marketing is generally prevalent in the country, and therefore, to check such offences the Essential Commodities Act was enacted. When a contravention of such an enactment is brought home against a person, then no leniency in the matter of sentence should be shown and certain amount of severity may be very appropriate and even called for, as the offence is against the society. He further contended that in view of the specific provisions of Section 7 of the Act, mens rea is not a necessary ingredient of the offence, and therefore, it cannot be said that the offence committed is technical. In any case, according to Shri Gumaste, the sentence imposed is grossly inadequate and has resulted in miscarriage of justice.

4. On the other hand, on behalf of the accused their conviction u/s 7 of the Act is challenged on the ground that the contravention of the conditions of the licence issued under the Maharashtra Foodgrains Dealers' Licensing Order, 1968, referred to hereinafter as the Licensing Order, is not a contravention of the Licensing Order itself, which is made punishable u/s 7 of the Act. According to the learned Counsel for the accused, condition No. 2(b) of the licence is merely a condition of the licence and is not a part and parcel of the Licensing Order. u/s 7 of the Act, only the contravention of the Licensing Order is made punishable and the condition of a licence not being a part and parcel of the main Licensing Order, the said contravention of the licence is not punishable u/s 7 of the Act, Therefore, according to the learned Counsel for the accused, the conviction of the accused u/s 7 of the Act is wholly illegal and is liable to be set aside. In support of this contention, the learned Counsel for the accused has relied upon two decisions of the Supreme Court, viz. East India Commercial Co. Ltd., Calcutta and Another Vs. The Collector of Customs, Calcutta, and Boothalinga Agencies Vs. V.T.C. Poriaswami Nadar, .

5. In my opinion, there is no substance in these contentions raised on behalf of the accused. It is not disputed before me that the Licensing Order, known as Maharashtra Foodgrains Dealers' Licensing Order, 1963, is issued u/s 3 of the Act. Clause 3 of the said Order reads as under :

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

authority;....

Then Clause 4(1) makes a provision for issue of a licence or for renewal thereof. Sub-clause (2) of Clause 4 lays down that every licence issued or renewed under this Order shall be in Form "B". Condition No. 2(b) of the licence reads as under:

The licensee shall not store foodgrains in which the aforesaid business is to be carried on at any place other than any of the godowns mentioned below.

From bare reading of the provisions of the Licensing Order it is quite clear that a person is prohibited from dealing in a commodity in any manner, except in accordance with the conditions of a licence granted by the licensing authority. Clause 4 of the Licensing Order lay³ down that every licence issued or renewed under the Licensing Order shall be in Form "B". For achieving the object of the Licensing Order and to regulate the trade it was necessary to impose conditions in the licence issued to a dealer. Condition No. 2(b) enjoins that the licence shall not store foodgrains at any other place other than referred to in the licence. Therefore, in my opinion, the conditions of licence are not independent of the provisions of the Licensing Order. From the plain reading of Clause 3 of the Licensing Order, it is further clear that no person can carry on the business as a dealer except in accordance with the conditions of the licence. It is thus clear that if the dealer fails to observe any of the conditions mentioned in the licence, he deals with the commodity in contravention of the conditions laid down in Clause 3 of the Licensing Order. Thus a breach of the conditions of the licence implies a breach of Clause 3 of the Licensing Order, which is made punishable under 6. 7 of the Act.

6. The decisions of the Supreme Court on which reliance is placed by the learned Counsel for the accused are clearly distinguishable. The said decisions cannot be read out of their context without the aid of the facts in those cases. So far as the decision in *East India Commrl. Co. v. Collector of Customs* is concerned, from the bare reading of the facts of the said case, it is quite clear that the Order itself did not contain or specify any conditions to be imposed in the licence. The imposition of the conditions was left to the licensing authority. He was authorised to impose such conditions from an administrative point of view. In the instant case, as already observed, the terms and conditions of the license are prescribed by Form "B" of Schedule II of the Licensing Order. Same is the case with *Boothalinga Agencies v. V.T.C. Poriaswami*. In that case the Supreme Court was considering the scope of Section 5, as unamended, of the Import and Export Act, 1947; The date of breach of condition of the licence was, therefore, material while dealing with the unamended provision. The Supreme Court followed its earlier decision in *East India Commrl. Co. v. Collector of Customs*. From the bare, reading of the relevant provisions of the Order under consideration of the Supreme Court, it is quite clear that the Orders themselves did not specify the terms and conditions to be imposed in the licence, while in the case before me these terms and conditions are referred to in the Form incorporated in the Schedule to the Licensing Order itself. If the material provisions of the Licensing Order are read

together harmoniously, it is quite clear that the Licensing Order lays down that no person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued by the licensing authority. Then Clause 4 makes it clear that a licence issued under the Licensing Order shall be in Form "B". Thus the licence issued in Form "B" is made an integral and essential part of the controlling and regulatory system contemplated by the Licensing Order. The conditions and terms of a licence by process of incorporation are made integral part of the Licensing Order itself. In the present case we are dealing with the statutory licence, and the Statute itself has chosen to lay down the conditions and terms of the licence. Therefore such terms and conditions of the licence will become part and parcel of the main Licensing Order itself. Such a view seems to have been taken by Mysore High Court in *S. Kariappa v. State* AIR [1971] Mys. 7 and a Full Bench of Andhra Pradesh High Court in *Arvapalli Kotiratnam Vs. State*, Therefore, in my opinion, the breach of the said conditions of the licence would obviously amount to contravention of the Licensing Order itself. In this view of the matter, the learned Metropolitan Magistrate was right in convicting the accused persons for the offence punishable u/s 7 of the Act.

7. So far as question of sentence is concerned, it is normally in the discretion of the trial Judge and it is for him to take into account all relevant circumstances and then decide what sentence would meet the ends of justice in a given case. The High Court has a power to enhance the sentence if it is unduly lenient or that in passing the order of sentence the trial Judge has manifestly failed to consider the relevant facts. The question of sentence being a matter of discretion should not be lightly interfered with and should not be enhanced unless this Court comes to a conclusion on consideration of the entire circumstances disclosed on record that the sentence imposed is inadequate. In a given case merely because the appellate Court feels that left to itself it would have preferred to impose a severe sentence by itself may not be a sufficient ground to justify enhancement of the sentence. It is only when the sentence appears on the facts and circumstances of the case to be so manifestly inadequate as to have resulted in failure of justice that the enhancement of sentence may be justified in appeal. In judging the adequacy of sentence, the nature of the offence, the circumstances of its commission, the injury to individual or to a society are some of the factors amongst others, which could ordinarily be taken into consideration by the Court. It is no doubt true that to check the malpractices and black marketing the Licensing Order was issued under the provisions of the Essential Commodities Act. It is also true that the requirement of mens rea cannot be lead into the provisions of the Act, and therefore, in a given case when the guilt is brought home against a person, no leniency in the matter of sentence is called for. But this is not an absolute rule, more so in view of the provisions of Section 1, proviso, as unamended.

8. In the present case, it is not disputed before me that the Gallas where the food-grains were stored by the accused were in the same hall. From the record it appears that the portions of the hall were only demarcated. Therefore, it cannot

be said that the accused any way intended to conceal the foodgrains, so that it will become impossible for the inspecting authority to check or to find out as to where the foodgrains are stored. These foodgrains were duly entered in the stock book and the account book. The stock position is normally verified from the stock book and the account book itself. It appears from the record that this stock was also mentioned in the return. If this is so, then, in my opinion, the learned Metropolitan Magistrate was right in coming to the conclusion that having regard to the facts and circumstances of the present case, it cannot be said that the accused had any dishonest intention of concealing stock or dealing with it contrary to the provisions of the licence or the Licensing Order. From the note appended to Form "B", it is further clear that the accused could have declared about the change of place within, forty-eight hours. It is no doubt true that the accused had failed to do so. However, it is clear from the evidence of the inspector Purohit that these food-grains were according to the stock book and these bags were shown in the account books maintained by the accused. He further admitted that these accounts are properly and correctly maintained. Therefore, in my opinion, the learned Metropolitan Magistrate was right in coming to the conclusion that the breach of the condition of the licence was merely a technical offence. Section 7(1), proviso (before amendment) lays down that in the case of a first offence, if the Court is of opinion that a sentence of fine only will meet the ends of justice, it may, for reasons to be recorded, refrain from imposing a "sentence of imprisonments. It is obvious from the material placed on record that the Court was not only dealing with the first offence, but the offence for which the accused were convicted was purely technical in nature. If this is so, the learned Metropolitan Magistrate was right in sentencing the accused to pay the fine only instead of imposing the sentence of imprisonment. So far as the question of quantum of fine is concerned, normally it is also a matter at the discretion of the trial Court. As already observed, in the present appeal I am dealing with the offence, which is technical in nature. Apart from this, Clause 7 of the Licensing Order provides that without prejudice to any other mode, the licence itself can be cancelled, if in the opinion of the licensing authority it is necessary to do so. I am informed at the Bar that the licence issued in favour of the accused persons was duly renewed. Therefore, taking into consideration these peculiar facts and the admissions of the Inspector, it cannot be said that the sentence of fine imposed by the learned Metropolitan Magistrate was disproportionate and has resulted in miscarriage of justice.

9. In the result, therefore, the appeal fails and is dismissed.