

Nagarmal Tekriwal

Vs

The State of Bihar

Criminal Appeal No. 40 of 1968

(CJI M. Hidayatullah, A. N. Ray, I. D. Dua JJ)

04.03.1970

JUDGMENT

HIDAYATULLAH, C.J. -

1. On May 28, 1966, Bhola Prasad Mandal, Supply Inspector Pethargama with other officers searched a godown belonging to Nagarmal Tekriwal (appellant) and found stored therein 45 quintals of rice, 90 quintals of paddy, 5.50 quintals of grains, 3 quintals of wheat, one quintal Arhar and 207 quintals of Khesari together with weighing a licence under the Bihar Foodgrains Dealer's Licencing Order, 1956, he was prosecuted under Section 7 of the Essential Commodities Act for violation of Clause 3 of the order. He was convicted by the Munsif Magistrate, First Class and sentenced to undergo rigorous imprisonment for six months. The foodgrains found in his possession were also ordered to be forfeited to the State. He appealed unsuccessfully to the Sessions Judge, Santhal Parganas, Dumka and his revision in the High court was summarily dismissed. He now appeals by special leave granted by this Court.

2. The defence of the appellant was that he was an agriculturist and that the foodgrains were grown by him on the lands he had taken on lease from various parties. In support of his defence, he produced both documentary and oral evidence. The documentary evidence consisted of certain lease deeds executed by him and his brother in favour of the lessors. Oral evidence showed that he and his brother were in possession of 80-90 bighas of land on which paddy and other foodgrains found in his possession, were grown.

3. The case proceeded against him on the basis of the presumption under para 3 of the Order. It may be read here :

"Licensing of wholesale and retail dealers :

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

(2) For the purpose of this clause, any person other than a bona fide consumer or an agriculturist, who stores any foodgrains in any quantity shall, unless the contrary is proved, be deemed to store the foodgrains for the purpose of sale."

It was held that as he had stored foodgrains above the permitted quantities for a wholesale dealer, he would be regarded as a wholesale dealer within the order. The defence before us again is that he is

an agriculturist and is not liable to the penalty under the law, because the presumption in his case cannot be drawn. It is also submitted that his case that he was an agriculturist stands completely proved in this case.

4. The learned Magistrate rejected the documentary evidence on the ground that the lease deeds were not registered and were not admissible in evidence under Section 49 of the Registration Act. The learned Sessions Judge did not accept this ground : at least he did not say anything about it. He held that such documents could be brought into existence at any time and were thus not reliable. Both the Magistrate and the Sessions Judge did not accept the evidence of the witnesses on the ground that they were interested in the appellant.

5. Mr. B. P. Singh, in arguing the case has drawn our attention to a ruling of this Court in *Manipur Administration v. M. Nila Chandra Singh* ((1964) 5 SCR 574) and contended that the appellant cannot be regarded as doing business as a dealer unless a series of transactions by him of sale were proved against him. The ruling does say that the words "carrying on the business" in the context of the Act postulate course of conduct and continuity of transactions. The ruling may not be applicable in certain circumstances, as for example where even a single transaction can be demonstrated to be in the course of business. Carrying on of business may be found in one instance or more, depending upon the circumstances of the case.

6. However, in the present matter we need not worry about the carrying on of business, because in our opinion, the appellant has successfully proved that he is an agriculturist and the presumption under paragraph 3(2) of the order cannot be drawn against him. That paragraph expressly excludes bona fide consumers and agriculturists from the presumption to be drawn from proof of storage only. It is obvious that sub-paragraph speaks of storage for sale as a dealer although the words "as a dealer" are not there, because storage has reference to business as a dealer and that is the essence of the Order. The fiction in the second sub-paragraph must be carried to its logical conclusion. In the present case, the appellant produced a number of lease deeds in which leases of various parcels of land are shown to have been granted to him. He also produced receipts of payment of lease money and he cited witnesses who deposed on oath that he and his brother cultivated 80-90 bighas of land. No doubt the lease deeds are not registered, but for the purpose of criminal proceedings, we have to see whether they are genuine or not and whether an inference of innocence can be based upon them. In our judgment they served the collateral purpose of showing that the lands about which the witnesses spoke orally were held by him for purposes of cultivation. If that be so, then, he is an agriculturist and it is easy to see that the evidence which was brought forward of witnesses deposing orally was not concocted to set up a false defence. Indeed no adequate reasons were given for rejecting the testimony of witnesses. The learned Magistrate rejected the testimony of one witness on the ground that he is the next door neighbour and has a "soft corner for him". We do not know why the evidence of the next door neighbour should be rejected; it can only be rejected if there is something intrinsically wrong with that evidence. The total circumstances in the case show that the appellant was in fact carrying on agricultural operations. He executed a number of lease-deeds, produced receipts and proved by oral evidence that he was an agriculturist. In his case, therefore, the presumption under para 3(2) could not be drawn. If the presumption is not drawn, then the case against him stands unproved because of the exemption which agriculturists enjoy.

7. On the whole, we are satisfied that his conviction was improperly reached. We allow the appeal and set aside his conviction. His bail bonds are cancelled. The order of forfeiture of foodgrains is also set aside. We are informed that the foodgrains were sold. If any money has been recovered by sale of the foodgrains, it shall be handed over to the appellant.

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