

State of Madras

Vs

C. V. Parekh and Another

Criminal Appeal No. 33 of 1968

(S. M. Sikri, I. D. Dua, V. Bhargava JJ)

28.10.1970

JUDGMENT

BHARGAVA, J. -

1. This appeal by special leave is directed against two respondents, C. V. Parekh and A. C. Parekh, who have been acquitted by the High Court of Madras of the charge under Section 102-B of the Indian Penal code, read with Sections 7 and 8 of the Essential Commodities Act, 1955 and clause (5) of the Iron and Steel Control Order after applying Section 10 of the Essential Commodities Act. The first respondent, C. V. Parekh, was the Manager of Microtec Castings (Private) Ltd., while the second respondent, his son, A. C. Parekh, was the Managing Director of that Company. They were also partners of a firm known as Messrs. C. V. Parekh and company. Both the Company and the Firm had offices in the same premises. Respondent No. 2 was in charge of the general management of the business and affairs of the Company, so that he was empowered to make all purchases and sales and to enter into all contracts and do all other acts on behalf of the Company. Respondent No. 1 was also an active participant in the management of the Company, so that the two respondents were in de facto charge of the management of the affairs of the Company. The firm had two plots of land at the Royapuram Good Yard for clearing of the goods and one Dhansuklal alias Kamdar was the godown clerk of the Company at the Yard. He is the brother of respondent No. 1. One Vallabhdas Thacker was the representative of another firm G. Ramji and Co., who had plots Firm. The case for the prosecution was that 48.350 tons of pig iron were supplied to the Company by Bhilai Steel Plants against an allotment order passed by the Iron and Steel controller. The price of pig iron was fixed at Rs. 250/- per ton by the Iron and Steel Controller under the Iron and Steel control Order, 1956. The goods were received at the Yard on 6th July, 1963, and were unloaded in the plots assigned to the Firm. Kamdar took delivery of the goods on behalf of the Company after paying the freight and other incidental charges due to the Railway. They were cleared from the plots on 17th July, 1963, by Kamdar on behalf of the Company. These goods were sold to various persons at rates varying between Rs. 300/- and Rs. 350/- per ton. These rates were higher than the controlled price fixed by the Iron and Steel controller which was Rs. 250/- per ton. The sale, according to the prosecution was the result of a conspiracy between the two respondents, Kamdar and Vallabhdas Thacker, and, in pursuance of this conspiracy, the offence committed was breach of clause (5) of the Iron and Steel Control order, 1956. All these four persons were, consequently, prosecuted and were convicted under Section 120-B of the Indian Penal code, read with Sections 7 and 8 of the Essential Commodities Act and with clause (5) of the Iron and Steel Control Order. In convicting the two respondents, the Magistrate also relied on Section 10 of the Essential commodities Act, 1955. On appeal, the High Court acquitted the two respondents, so that the State of Madras has come up to this Court in appeal against that order of acquittal.

2. We have been taken through the judgment of the High Court and the Magistrate by learned counsel for the appellant and we find that the findings of fact recorded do not justify any interference with the order of acquittal passed by the High Court. The Trial Magistrate held that the pig iron was bought by the Company, that its delivery was taken from the Railway by Kamdar on behalf of the Company; that the two respondents were in de facto Management of the affairs of the Company and knew of the arrival of the goods and that the goods were disposed of at a price higher than the controlled price by Vallabhadas Thacker with the aid of Kamdar. There was no finding that in the sale itself, either of these two respondents took any active part. He, however, recorded the conviction because he found that the goods had been lying in the plots of the Firm, M/s. C. V. Parekh and Co., for more than a week, that the two respondents were partners of the Firm, that the sale had been negotiated by Vallabhadas Thacker even prior to the time when the delivery of the goods was taken by Kamdar. On these facts, the Magistrate held that the negotiations for sale could not have taken place without the knowledge of the two respondents. That was the main basis of the conviction of the two respondents recorded by the Magistrate. The High Court set aside this order of conviction on the ground that there was no material on the basis of which a finding could be recorded, that the respondents knew about the disposal of pig iron by Kamdar and Vallabhadas Thacker. The circumstance that the two respondents were in management of the affairs of the Company and the Firm and were aware of the arrival of the goods could create suspicion against the respondents; but that suspicion could not take the place of proof. In order to justify conviction of the respondents evidence was needed to show that they knew of the sale or were parties to it. No such evidence was available. On this ground, the High Court set aside the conviction of the two respondents. The order of the High Court is obviously correct. No evidence on the record has been pointed out from which it could be inferred that the two respondents had any knowledge of the sale which was manoeuvred by Kamdar and Vallabhadas Thacker, nor is there evidence to show that they took any part in the negotiations for sale, or in the sale itself. Consequently, it is clear that their conviction was not justified.

3. Learned counsel for the appellant, however, sought conviction of the two respondents on the basis of Section 10 of the Essential Commodities Act under which, if the person contravening an order made under Section 3 (which covers an order under the Iron and Steel Control Order, 1956), is a was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly. It was urged that the two respondents were in charge of, and were responsible to, the Company for the conduct of the business of the Company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of clause (5) of the Iron and Steel Control Order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High court that the sale in contravention of clause (5) of the Iron and Steel Control Order was made by the Company. In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the company contravened clause (5) of the Iron and Steel Control Order, the two respondents could not be held responsible. The actual contravention was by Kamdar and Vallabhadas Thacker and any contravention by them would not fasten responsibility on the respondents. The acquittal of the respondents is, therefore, fully justified. The appeal fails and is dismissed.

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