

State of Bihar

Vs

Bhagirath Sharma and Another

Criminal Appeal No. 7 of 1970

(I.D. Dua, K.K. Mathew JJ)

09.04.1973

JUDGMENT

DUA, J. -

1. The State of Bihar has appealed to this Court with a certificate of fitness under Article 134(1)(c) of the Constitution from the judgment and order of a learned Single Judge of the Patna High Court, dated August 14, 1969, quashing, on revision under Sections 439/561-A, Cr.P.C., the prosecution of Bhagirath Sharma and Radhey Shyam Sharma, the respondents in this Court, for contravention of Clauses 3, 4 and 5 of the Bihar Essential Commodities Act - other than Foodgrains - Prices and Stocks (Display and Control) Order, 1967 (hereinafter called the Order), pending in the Court of the Sub-Divisional Magistrate, Gaya.

2. According to the prosecution case, on receipt of confidential information that the proprietor of M/s. Auto Spare, Law Road, Gaya, was not properly maintaining the account of Motor Tyres, with the ulterior motive of withholding the supply of the said article to the genuine customers, Shri Ram Nivas Singh, Marketing Officer, Gaya, had along with two Supply Inspectors, made a surprise inspection of the firm on May 22, 1969 and found certain irregularities. One of those irregularities was the failure of the firm to display the price list and stock position of Motor Tyres anywhere in their shop, in contravention of Clause 4 of the Order. On search by the said Marketing Officer, a huge stock of Motor Tyres of different varieties numbering 487 were actually found stored in the inner portion of the shop. In view of the irregularities discovered by the Marketing Officer and the seizure of the stock of Motor Tyres, it was felt that prima facie case had been made out against the partners of the said firm, Shri Bhagirath Sharma and Shri Radhey Shyam Sharma respondents in this Court, for contravention of Clauses 3, 4 and 5 of the Order. Compliant to that effect was accordingly made in the Court of the Sub-Divisional Magistrate on May 23, 1969. On the same date, the Sub-Divisional Officer, Sadar, Gaya, after perusing the report of the Marketing Officer, took cognizance of the case under Section 7 of the Essential Commodities Act and transferred it for disposal to the Court of Shri N. N. Singh, Munsif Magistrate, 1st Class, Gaya. It is against this order of the Magistrate that the respondents in this Court approached the Patna High Court under Sections 439/561-A, Cr.P.C.

3. A learned Single Judge of the High Court after referring to the two relevant items (Nos. 1 and 5) of Schedule I appended to the Order felt bound by an earlier Single Bench decision, dated April 20, 1969, of that High Court in Criminal Misc. Case No. 1479 of 1968 holding that item No. 1 of Schedule 1 could not be assumed to cover the commodities like motor tyres and motor tubes though he himself thought that he would have taken a different view, had the matter been res integra. Item No. 5 even according to the learned Single Judge's own view could not cover the motor tyres and

motor tubes. Being, however, bound by the earlier decision, he held the prosecution of the proprietors of the firm to be misconceived. The prosecution was accordingly quashed.

4. In this Court, our attention has been drawn to item No. 1 in Schedule 1 of the Order. This item reads :

"1. Component parts and accessories of automobiles".

It is contended that this item must cover 'tyres and tubes of motor cars and motor cycles'. According to the argument forcibly pressed on behalf of the State of Bihar, Tyres and Tubes of automobiles are their essential component parts and the earlier Single Bench decision of the Patna High Court (in Criminal Misc. Case No. 1479/1968) followed as a binding precedent in the present case should be held to have been wrongfully decided. The other item to which reference was made by the High Court in the impugned judgment is item No. 5 which reads :

"5. Cycle tyres and tubes (including cycle rickshaw tyres and tubes)."

The submission that this item should be held to cover motor tyres and motor tubes was rejected by the High Court. Before us, however, the State has not placed any reliance on item No. 5 though on behalf of the respondents it has been suggested that where "tyres and tubes" are intended to be included as an item in the Schedule, they have actually been expressly so stated. The respondent has also brought to our notice a Gazette Notification (No. G.S.R. 82), dated September 18, 1970, published in the Bihar Government gazette (Extraordinary), dated September 22, 1970, according to which four items were added after item No. 9 in Schedule II of the Order. The new item No. 11 reads :

"11. Tyres and tubes of cars, buses, jeeps, vans, trucks, automobiles of any category whatsoever, tractors and tractor-trolleys."

Quite clearly after this Notification there can be no doubt whatsoever that the Order is comprehensive enough to take within its fold tyres and tubes of cars as also of 'automobiles of any category whatsoever'. The effect of the decision of the present case would, therefore, seem, prima facie, to be confined only to the fate of the prosecution initiated against the respondents. It has not been stated or even suggested at the Bar if any (and if so, how many) pending cases of similar nature are likely to be governed by the decision of this Court, unfortunately, even the High Court has made a laconic order on oral request, merely stating :

"It is certified -

That this case fulfils the requirement of article 134(1)(c) of the Constitution of India and is fit for appeal to the Supreme Court."

without showing on its face what substantial question of law or principle of great importance was involved justifying the grant of certificate under Article 134(1)(c). The word "certify" in this Article, as often observed by this Court, is a strong word postulating the exercise of judicial discretion in determining if the question requiring decision by this Court involves a matter of principle or a substantial question of law of great general importance. Such certificate is not to be given as a matter of course on the mere ground that the impugned decision is considered to be erroneous. There must be exceptional or special circumstances like infringement of essential principles of justice or some difficult question of law of great public or private importance. It is not

to be granted so as to convert this Court into an ordinary court of further appeal. We do not find any material or the record suggesting that the decision by this Court of the question posed is likely to govern any case other than the one in hand relating to the acquittal of the respondents. It appears that the attention of the High Court was not drawn to the Bihar Government notification, dated September 18, 1970, by means of which the defect or lacuna pointed out by the High Court was removed for future cases. Had that Notification been brought to the notice of the High Court, one would have expected it to state in the order granting the certificate the reasons impelling to do so.

5. Now in the judgment in Criminal Misc. Case No. 1479/1968, reference was made to a Notification, dated January 11, 1968 (No. S.O. 281) issued by the Ministry of Commerce, Government of India in which tyres and tubes of scooters were expressly mentioned as essential commodities distinct from the component parts and accessories of automobiles. Reference in that judgment was also made to a Notification, dated August 22, 1968 (No. S.Q. 2978) issued by the Central Government in which similarly tyres and tubes of cars, etc. were specifically mentioned as essential commodities, and to a still later Notification by the Central Government, dated January 3, 1969, (No. S.O. 35) in which tyres and tubes of cars were mentioned in a manner almost similar to the one found in the Bihar Government Gazette, Notification No. G.S.R. 82, dated September 18, 1970.

6. In this background even assuming that from a broad point of view, 'tyres and tubes of motor cars' may be considered to be covered by the general expression "component parts and accessories of automobiles" when construed in its widest import, on comparison of the scheduled items of the Order with the items in the other Notifications mentioned and considered in the earlier decision of the High Court (In CrI. Misc. Case No. 1479/1968), can it not be reasonably and rationally assumed that it was not intended by the draftsman to extend the Order to "tyres and tubes of motor cars". In our view, the drafting precedents furnished by the other Notifications considered in the earlier decision of the High Court in CrI. Misc. Case No. 1479/1968 do indicate that the draftsman did not intend the scheduled items in the Order as in force in May, 1969 to cover "tyres and tubes of motor cars".

7. But independently of this aspect the question may also be considered from another point of view, viz., if the legal mandate contained in the Order is expressed with such certainty and clarity as to give reasonably precise and adequate guidance to those who want to be law-abiding. In other words, does the Order lay down an ascertainable standard of guilt by unambiguously specifying the tyres and tubes of motor cars as a scheduled item. We do not think it does. Unless the dealers are in a position to know with certainty that the items of tyres and tubes of motor cars are included in the scheduled items of which the price list and the stock position are to be displayed in a conspicuous part of their business premises, in our opinion, they cannot be held guilty in a Criminal Court of an offence under the Essential Commodities Act for violation of any such mandate. According to the fundamental principle of our criminal jurisprudence, which reflects fair play, the dealer must know with reasonable certainty and must have a fair warning as to what his obligation is and what act of commission or omission on his part would constitute a criminal offence before he can be called upon to answer a charge and be liable to be convicted in a criminal court for any violation of a legal mandate. This approach is in conformity with the general requirement that the act or default should be associated with a legally blameworthy condition of mind. On the view that we have taken the High Court seems to us to have been fully justified in recording the respondents' acquittal and we see no cogent ground for disagreeing with it.

8. The appeal accordingly fails and is dismissed.

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