

The State of Karnataka

Vs

K. M. Krishnaiah

Criminal Appeal No. 237 of 1975

(R.S. Sarkaria, P.N. Shinghal JJ)

10.02.1976

JUDGMENT

SHINGHAL, J. -

1. This appeal by special leave is directed against the judgment of the High Court of Karnataka dated November 20, 1974, upholding the judgment of the Sessions Judge of South Kanara dated July 16, 1974, setting aside the conviction of respondent Krishnaiah for an offence under Section 7 of the Essential Commodities Act and the sentence thereunder. The respondent was a grower of paddy, and it was alleged against him that while he grew paddy in 7.12 acres of land, and was liable to sell 3.12 quintals by way of levy, he ignored the demand notice which was served on him on October 28, 1971 and thereby contravened the provision of Clause 3 of the Karnataka Paddy Procurement (Levy) Order.

2. The Sessions Judge took the view that it was only the "Purchase Officer" to whom the paddy was required to be sold, and that as the demand for the levy was made by the Enforcement Officer, it was unauthorised. It is however not in dispute before us that the Sessions Judge lost sight of the newly promulgated Karnataka Paddy Procurement (Levy) Order, 1966, hereinafter referred to as the Levy Order, Clause 3 of which provided for the sale of paddy to the Enforcement Officer by way of levy. But it has been argued on behalf of the respondent that, even so, there was no evidence to show that the demand notice was signed by an Enforcement Officer. Our attention has been invited in this connection to that part of the judgment of the Sessions Judge where it has been stated that as the accused had challenged the appointment of the person who had issued the demand notice as the Enforcement Officer, it was necessary for the prosecution to prove the appointment and that, in absence of any such proof, there is no occasion for taking a different view of the matter.

3. Clause 2(c) of the Levy Order defines "Enforcement Officer" to mean

any person appointed by order of the Deputy Commissioner of the district as Enforcement Officer in respect of such area as may be specified in such order, and where no such person is appointed for the area, the Revenue Inspector of the circle having jurisdiction.

It has been argued by Mr. Nettar, for the appellant State, that as the order for the levy of paddy had been signed and issued by the Revenue Inspector concerned, the Sessions Judge committed an apparent error in taking the view that it was not issued and signed by a duly appointed Enforcement Officer.

4. As would appear from the definition mentioned above, Enforcement Officer was the person

appointed by an order of the Deputy Commissioner as such for a specified area. It was therefore permissible for the Deputy Commissioner to appoint a person other than the Revenue Inspector to be the Enforcement Officer, and it was only when he did not think it proper to do so that the Revenue Inspector of the circle could function as the Enforcement Officer. So when the accused has raised a controversy regarding the authority of the Revenue Inspector to issue the order of levy, it was necessary for the prosecution to prove that no one else had been appointed to be the Enforcement Officer and the Revenue Inspector of the circle has the authority to function in that capacity. The prosecution did not, however, produce any such evidence. In fact Mr. Nettar has not been able to refer us to any averment of the prosecution or the appellant on the record that no one else had been appointed as the Enforcement Officer and the Revenue Inspector had the authority to function as such. It cannot therefore be said that the prosecution was able to prove that the demand notice was issued by a competent officer.

5. It has next been argued by Mr. Nettar that as the respondent did not make a grievance that the quantity of paddy to be sold by him in pursuance of Clause 3(2) of the Levy Order was excessive and he did not avail of the provisions of Clause 4 of the Levy Order, it was not permissible for him to dispute his liability to sell the quantity of paddy which had been determined by the officer concerned. The Sessions Judge has taken the view that it was permissible for the accused to show that the order which has been served on him for the sale of levy was illegal as it did not comply with the requirement of Clause 3(1) of the Levy Order inasmuch as it was made without ascertaining the quantity of paddy in his possession or control.

6. Clause 3 of the Levy Order reads as follows :

3. Levy of Paddy. - (1) Every grower shall out of the paddy grown in his holding and held in stock by him in respect of each crop, sell to the State Government or its authorised agent at the purchase price such quantity of paddy in accordance with the scale specified in Schedule I as may be determined by the Enforcement Officer after taking into consideration the information available with him regarding the holding of the grower and the paddy grown in such holding.

There is an explanation to the clause which provides, inter alia, that

paddy in the possession or control of the grower immediately after it is harvested shall be deemed to be paddy held in stock by the grower.

It was therefore necessary for the Enforcement Officer to ascertain the quantity of paddy in the possession or control of the respondent immediately after it was harvested, for the purpose of determining the quantity of the levy, and it was not enough for him to determine the quantity on the basis of extent of the cultivation in the field. It is not disputed before us that the prosecution did not lead any evidence to show that the Enforcement Officer had taken into consideration the quantity of the paddy in the possession or control of the respondent for the purpose of determining the quantity which he was required to sell to the Enforcement Officer, and it cannot be said that the order which was issued for the sale of paddy was drawn up in accordance with the law.

7. Mr. Nettar tried to get out of this difficulty by arguing that as the respondent did not raise an objection regarding the quantity of the paddy specified in the order which was served on him all that the trial Court has to do was to make a reference to Schedule I of the Levy Order and to uphold the quantity of the levy by calculating it on the assumption that it has been grown over an area of 7.12 acres. The argument is however untenable because what Clause 3 of the Levy Order provides is not

merely that a grower shall, inter alia, sell to the State Government that quantity of paddy which he is liable to sell in accordance with the scale specified in Schedule I, but also that his liability in that respect shall be "determined" by an Enforcement Officer. So when such a determination was not made on the basis of the paddy "held in stock" by the appellant, we have no reason to think that the Sessions Judge and the High Court went wrong in upholding the contention of the respondent that the order which had been served on him under Clause 3(2) of the Levy Order was not drawn up in accordance with the law and was not binding on him.

8. There is thus no force in this appeal and it is dismissed.

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