

Sopana Trimbak Wani

Vs

State of Maharashtra

Criminal Appeal No. 205 of 1971

(P. N. Bhagawati, N. L. Untwalia, Syed M. Fazal Ali JJ)

12.08.1976

JUDGMENT

BHAGWATI, J. -

1. The appellant was at the material time carrying on business as a wholesale dealer in foodgrains under a licence issued to him under the Maharashtra Foodgrains Dealers' Licensing Order, 1963 (hereinafter called as the Order of 1963). The license was in a printed form and Clause 1(A) of the license provided that the licensee, if he is a wholesale dealer, shall sell foodgrains only to retailers and consumers and not to licensed wholesalers except under a permit obtained from the licensing authority. Note (1) of Clause 7(A) declared that the licensing authority may permit a wholesaler, who is a licensee, to sell foodgrains to a licensed wholesaler in other States, subject to the restrictions that may operate on inter-State movement of food-grains and also permit a licensed wholesaler of one market to sell foodgrains to a licensed wholesaler in another market within the State, in cases where he is satisfied that such sales are made in accordance with the traditional pattern of trade.

2. On March 18, 1967 the appellant made three applications to the Mamlatdar for permit to export certain quantities of foodgrains to M/s. Ratilal Ramanlal at "Shrirampur". It was not stated in the applications to which "Shrirampur" he intended to export foodgrains and no particulars were given. But as subsequent events show, he intended to export foodgrains not to "Shrirampur" which is situate in Maharashtra but to "Serampore", a place near Calcutta. The Mamlatdar issued three permits on the basis of the applications made by the appellant and by these three permits the Mamlatdar permitted the appellant to sell certain specified quantities of foodgrains to M/s. Ratilal Ramanlal of Shrirampur within three days from the date of each permit. These three permits were issued by the Mamlatdar in exercise of the powers vested in him under Clause 7(A) of the licence under the order of 1963. It appears that when the appellant went to the goods clerk for the purpose of dispatching the foodgrains to Serampore, he was told by the goods clerk that there was no goods shed at Serampore railway station near Calcutta and no wagon could, therefore, be made available for exporting the foodgrains to Serampore, but instead the appellant might export the foodgrains to Shalimar railway station where a goods shed was available. The appellant thereupon got the three permits amended by a clerk in the office of the Mamlatdar by substituting the words "Shalimar via Nagpur" for the word "Shrirampur" and on the strength of these amended permits, he exported the foodgrains to Shalimar. When the Mamlatdar came to know that the appellant had exported foodgrains outside the State of Maharashtra on the strength of the permits issued by him, without obtaining permits under Clause 3 of the Maharashtra Foodgrains (Export Control) Order, 1966 (hereinafter referred to as Order of 1966), he immediately reported the matter after holding an inquiry and a complaint was lodged against the appellant and two others inter alia for contravention of Clause 3 of order of 1966, punishable under Section 7 of the Essential Commodities Act, 1955.

The learned Additional Sessions Judge, who tried the case, convicted the appellant of the offence under Section 7 of the Essential Commodities Act, 1955 read with Clause 3 of the order of 1966 and sentenced him to suffer rigorous imprisonment for one year and to pay a fine of Rs. 3000. The appellant being aggrieved by the order of conviction and sentence recorded against him, preferred an appeal to the High Court, but the High Court agreeing with the view taken by the learned Additional Sessions Judge, confirmed the conviction and merely gave relief in regard to sentence by reducing it from one year to six months' rigorous imprisonment, while maintaining the sentence of fine. The appellant thereupon preferred the present appeal with special leave obtained from this Court.

3. It is clear from the three permits which have been exhibited as Exhibits 11, 12 and 13 in the case that they were issued by the Mamlatdar in exercise of the powers conferred upon him by Clause 7(A) of the licence which was issued to the appellant under the order of 1963. These three permits merely permitted the appellant to sell certain specified quantities of foodgrains to M/s. Ratilal Ramanlal, who were described as wholesale dealers. We will assume for the purpose of this appeal that the amendment of the three permits by substituting the words "Shalimar via Nagpur" for the word "Shrirampur" was not an unauthorised amendment and the three permits authorised the appellant to sell the specified quantities of foodgrains to M/s. Ratilal Ramanlal, wholesale dealer of Shalimar, which was admittedly in the State of West Bengal. The Mamlatdar was, under note (1) to Clause 7(A) of the licence, authorised to issue permit to the appellant to sell foodgrains to M/s. Ratilal Ramanlal, who were wholesale dealers in another State. But these three permits, which were issued by the Mamlatdar, were for the purpose of enabling the appellant to sell and they did not authorise the appellant to export foodgrains outside the State of Maharashtra in fulfillment of the contracts of sale which may have been entered into by the appellant with M/s. Ratilal Ramanlal. Clause 3 of the order of 1966 provided in terms clear and explicit that no person shall export or cause to be exported any foodgrains from any place in the State of Maharashtra to any place in India outside that State, except under and in accordance with an authorization issued in this behalf by the State Government or the Collector or by an officer authorised in that behalf by the State Government or by the Collector. The appellant, therefore, though permitted to sell the specified quantities of foodgrains to M/s. Ratilal Ramanlal under the three permits issued by the Mamlatdar, was not entitled to export such quantities of foodgrains to M/s. Ratilal Ramanlal outside the State of Maharashtra without obtaining the requisite authorization from the State Government or the Collector or an officer authorised in that behalf by the State Government or the Collector. There was in the present case clearly no such authorisation obtained by the appellant. The evidence on record shows that the Mamlatdar was not authorised by the State Government or the Collector to issue any such authorisation, and in event, the three permits issued by him did not even purport to grant any such authorisation to the appellant. There was, therefore, clearly a breach of Clause 3 of the order of 1966 committed by the appellant in exporting foodgrains to M/s. Ratilal Ramanlal at Shalimar and the three permits issued by the Mamlatdar could not exonerate him from the consequences flowing from such breach. We think that in the circumstances, the appellant was rightly convicted of the offence under Section 7 of the Essential Commodities Act, 1955, read with Clause 3 of the order of 1966 and we do not find any reason to interfere with the judgment of the High Court confirming his conviction.

4. The question then arises as to whether we should interfere with the sentence imposed on the appellant by the High Court. It is true that under Section 7(1)(a)(ii) of the Essential Commodities Act 1955, a person who contravenes any order made under Section 3(2)(d) - and the order of 1966 is plainly an order made under that provision - shall be liable to be punished with imprisonment for a term which shall not be less than three years but which may extend to seven year and shall also be

liable to fine, but there is a proviso to that sub-section which says that the court may for any adequate and special reasons, to be mentioned in the judgment, impose a sentence of imprisonment for a term of less than three months. Now in the present case the appellant has already undergone imprisonment for a period of one month and 8 days. The appellant believed that the three permits issued to him by the Mamlatdar were sufficient authority to him to export the specified quantities of foodgrains to "Shalimar". These three permits certainly permitted him to all the specified quantities of foodgrains to M/s. Ratilal Ramanlal of Shalimar and it could not, therefore, be said to be altogether unreasonable on his part to carry an impression that these three permits did authorise him to carry the specified quantities of foodgrains to Shalimar. It is true that the Mamlatdar had no authority to issue an authorisation for export under Clause 3 of the order of 1966, but under that clause any officer could be authorised by the State Government or by the Collector to issue such authorisation and the appellant might well have believed that the Mamlatdar was an officer authorised to issue such authorisation. In the circumstances, we are of the view that this is a fit case in which we would be justified in acting under the proviso to Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 in reducing the sentence of imprisonment to that already undergone by the appellant though it would be less than three months. The appellant has also been sentenced to pay a fine of Rs. 3000. We find from the evidence that the appellant has not made a profit of more than Rs. 2300 in this transaction. We think that, in the circumstances, it would meet the ends of justice if the fine imposed on the appellant is reduced to Rs. 2000.

5. We accordingly allow this appeal in part and, while confirming the conviction of the appellant, reduce the sentence of imprisonment imposed on the appellant to that already undergone by him and reduce the sentence of fine to Rs. 2000 with a direction that in default of payment of fine, the appellant shall suffer imprisonment for a period of three months.

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