

Sat Pal

Vs

State of Haryana

Criminal Appeal No. 196 of 1972

(Syed M. Fazal Ali, A. D. Koshal JJ)

27.03.1979

JUDGMENT

FAZAL ALI, J. -

1. This appeal by special leave is directed against the judgment of the Punjab and Haryana High Court dated March 24, 1972 by which a revision petition of the accused who was convicted under Section 7 of the Essential commodities Act, was dismissed on a plea raised by the present appellant that the order of confiscation of his truck be cancelled, was overruled. In the instant case, we are not all concerned with merits of the conviction of the accused. The only point that arises for determination is, whether the order of the Magistrate directing the confiscation of the truck under Section 7(1) (b) of the Essential Commodities Act as it stood in 1969 is legally valid. The appellant had filed a petition before the High Court under Section 561 A prying that the order of the Magistrate was extremely harsh and worked serious injustice to the appellant whose property worth one lac has been confiscated for an attempt to export from Haryana to Delhi 75 maunds of cattle fodder. The High Court does not appear to have considered the merits of the application filed by the petitioner but while deciding the case of the accused on merits, it upheld the order of confiscation.

2. Mr. Bhardwaj appearing for the appellant submitted three contentions before us. In the first place it was argued that there is nothing to show that there was any attempt to export fodder in the truck outside the border of Haryana. We have considered this argument but in view of the findings of fact arrived by the Courts below, it is established beyond doubt that the truck belonging to the appellant was seized on the Haryana-Delhi border when it wanted to cross the border and enter the Delhi border. Thus a clear attempt to export the fodder to Delhi was provided. Secondly, it was argued that the mere exporting of cattle fodder, is not prohibited by law. This argument is also without any substance inasmuch as there was a notified Order passed by the Haryana Government under which the export of cattle fodder was prohibited from Haryana to Delhi. This Order was passed under Section 3 of the Essential Commodities Act and violation of this Order was punishable under section 7(1) (b) of the Essential commodities Act. This argument is, therefore, overruled.

3. The last point put forward before us by the counsel for the appellant was that although the appellant had invoked the inherent jurisdiction of the High Court under Section 561A CrPC to cancel the order in view of its harshness and arbitrariness, yet the High Court did not consider this point at all. It was submitted that, at any rate, this was a most suitable case in which the discretion under the proviso to Section 7(1) (b) could have been exercised by the Government. We find ourselves in complete agreement with this argument which is well-founded and must prevail, Section 7(1)(b) reads thus :

Any property in respect of which the order has been contravened or such part thereof as to the Court may seem fit including any packages, coverings or receptacles, in which the property is found and any animal, vehicle vessel or other conveyance used in carrying the property, shall be forfeited to the Government :

Provided that if the Court is of opinion that it is not necessary to direct forfeiture in respect of the whole or, as the case may be, any part of the property or any packages, coverings or receptacles or any animal, vehicle, vessel or other conveyance, it may for reasons to be recorded, refrain from doing so.

4. A perusal of the section and also of the proviso clearly shows that the Court has undoubtedly a discretion in suitable cases for reasons to be recorded for not imposing the penalty of confiscation. In the instant case there are special circumstances which clearly attract the application of the proviso and the order of confiscation ought not to have been passed by the Magistrate. To begin with, the appellant was not a party to the proceedings as he was not given an opportunity to show cause to the Court the circumstances under which the order of confiscation could be passed. Secondly, the truck of the appellant was every valuable property and to order its confiscation merely because an attempt was made to export cattle fodder through it, would indeed be a very harsh order so as work serious injustice to the appellant. Thirdly, there is no evidence to indicate that the truck which was used to carry the fodder was hired with the knowledge or concurrence of the appellant,. Having regard to these special circumstances, we are clearly of the opinion that this was a fit case in which Court ought to have exercised its discretion under proviso in not imposing the penalty of confiscation. As the present appeal is directed against an order of confiscation, this Court also exercises the same power as the trial Court. We, therefore, allow this appeal, set aside the order of confiscation passed by the Magistrate as also the orders of the Sessions Judge and High Court upholding the order. The truck will now be returned to the appellant.

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