

State of Bihar

Vs

Gulab Chand Prasad

Criminal Appeal No. 571 of 1981

(D.A. Desai, R.B. Misra JJ)

24.07.1981

JUDGMENT

1. We have heard Mr. Bhagat, learned counsel for the appellant-State, and Mr. Goburdhan, learned counsel for the respondent.

2. This is a peculiar case. The State of Bihar had issued an order described as Bihar Essential Articles (Display of Prices and Stocks) Order, 1977 (hereinafter referred to as the Order). It was published in the Bihar Government Gazette, Extraordinary, dated September 10, 1977. It came into force from the date of publication, as provided in sub-clause (c) of Clause 1. Sub-clause (a) of Clause 2 of the Order defines "article" to mean any essential commodity mentioned in Schedules I and II appended to the Order and further confers powers on the State Government to include any other articles if found necessary. Clause 3 casts an obligation on the dealer to display at a conspicuous place near the entrance of his business premises a list of prices and stocks of all the articles mentioned in Schedule I in which he deals. Schedule I placitum 24 sets out "soda ash (for washing purposes)" as one of the articles covered by the Order. This Order is issued in exercise of the powers conferred by Section 3 of the Essential Commodities Act, 1955 (hereinafter referred to as the Act). As a corollary the breach of its provisions would be punishable under Section 7 of the Act.

3. It is alleged by the prosecution that the respondent is a dealer in soda ash. Upon an inspection of his premises on April 13, 1979 the visiting officer found an unaccounted stock of 13 bags of soda ash, in relation to which, according to the complainant, the respondent could not produce the necessary papers. Subsequently, the respondent submitted some cash memos and also pointed out that he had sold soda ash to various parties. Maybe, that would be for him to establish. The fact remains that there was unaccounted soda ash as complained of in the possession of the respondent and the complainant alleged that this would be violative of the Order. A complaint was filed alleging the aforementioned fact, though of course not mentioning the Order, provision of which was violated, simultaneously stating that the respondent has committed an offence punishable under Section 7 of the Act. It may be mentioned that further allegation in the complaint were that the respondent has committed offences under Sections 420 and 471 of the Indian Penal Code.

4. It appears that the respondent moved the High Court for quashing the proceedings. It was alleged on his behalf that soda ash is not an essential commodity or an article in respect of which there is any statutory order compelling the dealer in the commodity either to display a list of prices or declare the stock. This submission found favour with the High Court. Surprisingly, learned counsel appearing on behalf of the State did not point out the Order now relied upon as having been issued under the Act or any other Order, if there be one under the Defence of India Rules. The High Court

was constrained to observe that not only the complaint is frivolous but it was absolutely mala fide because if there was no order imposing any obligation on the dealer of a commodity to display the price list or to declare the stock, there will be no question of a dealer not accounting the stock of any such article and if there was no such order, absence of explanation in respect of such a commodity or otherwise may not, according to the High Court, entail any liability in law.

5. We are not disposed to make any observation at this stage on any part of the controversy between the parties because a statutory order covering soda ash is in existence and in force. Mr. Bhagat, learned counsel for the appellant-State, assured us that it is in force. If it is in force, a dealer in any of the commodities mentioned in Schedule I will have to comply with Clauses 3 and 4 of the Order. Whether there is any violation of the statutory provisions enacted in Clauses 3 and 4 of the Order is a matter to be adjudicated. But it would be difficult to subscribe in the face of the Order published in the Gazette - the copy of the Gazette having been submitted to us - to ignore the existence of the Order. The whole basis of the approach of the learned Judge of the High Court gets knocked out once the Order is shown to be existing and in force. Maybe, the High Court would have acted as we propose to do if the Order was shown to the learned Judge hearing the matter. Undoubtedly, Mr. Goburdhan told us that nearly two year have elapsed since the prosecution was launched. That is a fact. However, it would be unwise to ignore the existence of a subsisting order and to dispose of a proceeding as if no such order is there.

6. We accordingly allow the appeal, set aside the order of the High Court quashing the complaint and direct that the complaint be proceeded with in accordance with law.

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