

Sheoratan Agarwal and Another

Vs

State of Madhya Pradesh

Criminal Appeals Nos. 452-453, of 1984

(O. Chinnappa Reddy, D. P. Madon JJ)

12.09.1984

JUDGMENT

O. CHINNAPPA REDDY, J. -

1. Special leave granted.

2. A complaint was laid by the State of Madhya Pradesh through the Inspector, Food and Civil Supplies, Dewas against the two petitioners Sheoratan Agarwal and Raghunandanlal Chaturvedi, the Managing Director and the Production Manager of M/s 5-S limited, a public limited company with its registered office at Calcutta, for alleged violations of Clauses 2(c)(i) and 3 of the Madhya Pradesh Pulses, Edible Oil Seeds and Edible Oil Dealers Licensing Order, 1977 and Clause 3 of the Madhya Pradesh Essential Commodities (Price Exhibition and Price Control) Order, 1977 read with Sections 3 and 7 of the Essential Commodities Act. The petitioners moved the High Court of Madhya Pradesh under Sections 397 and 482 of the Code of Criminal Procedure to quash the proceedings against them on the ground that they could not, in law, be prosecuted unless the Company itself was prosecuted. The High Court overruled the contention raised on behalf of the petitioners. Hence these two appeals by special leave under Article 136 of the Constitution.

3. Shri S. T. Desai, learned counsel for the petitioners, urged the same contention before us, relying for that purpose upon the language of Section 10 of the Essential Commodities Act, and the decision of this Court in State of Madras v. C. V. Parekh (AIR 1971 SC 447 : (1970) 3 SCC 491 : 1971 SCC (Cri) 97 : 1971 Cri LJ 418) and the decisions of some High Courts : State of Gujarat v. Chandulal Jethalal ((1980) 21 Guj LR 353), Mirji Brothers Oil Mill v. State of Karnataka ((1980) 2 Kant 35), Santi Kumar Agarwala v. State (ILR 1975 Cut 86).

4. We do not think that the language of Section 10 of the Essential Commodities Act justifies the submission made on behalf of the petitioners that if it is alleged that the person contravening the order made under the Essential Commodities Act is a company, the prosecution of the directors, the officers, and servants of the company or other persons is precluded unless the company itself is prosecuted. We are afraid the submission made on behalf of the petitioners proceeds upon a misunderstanding of the decision of this Court in State of Madras v. C. V. Parekh (AIR 1971 SC 447 : (1970) 3 SCC 491 : 1971 SCC (Cri) 97 : 1971 Cri LJ 418). So do the various other decisions of High Courts cited before us.

5. Section 10 of the Essential Commodities Act is as follows :

(1) If the person contravening an order made under Section 3 is a company, every

person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly :

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. - For the purpose of this section, -

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm

The section appears to our mind to be plain enough. If the contravention of the order made under Section 3 is by company, the persons who may be held guilty and punished are (1) the company itself, (2) every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company whom for short we shall describe as the person-in charge of the company and (3) any director, manager, secretary or other officer of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, whom for short we shall describe as an officer of the company. Any one or more or all of them may be prosecuted and punished. The company alone may be prosecuted. The person - in charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person-in-charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the company. It does not lay down any condition that the person-in charge or an officer of the company may not be separately prosecuted if the company itself is not prosecuted. Each or any of them be separately prosecuted or along with the company. Section 10 lists the person who may be held guilty and punished when it is a company that contravenes an order made under Section 3 of the Essential Commodities Act. Naturally, before the person-in charge or an officer of the company is held guilty in that capacity it must be established there has been a contravention of the order by the company. That should be axiomatic and that is all that the Court laid down in *State of Madras v. C. V. Parekh* (1978 Cri LJ 222 : 82 Cal WN 363 : (1978) 1 FAC 183) as a careful reading of that case will show and not that the person-in charge or an officer of the company must be arraigned simultaneously along with the company if he is to be found guilty and punished. The following observations made by the Court clearly bring out the view of the Court : [SCC para 3, p. 493, SCC (Cri) p. 99]

It was urged that the two respondents were in charge of, and were responsible to, the company for the conduct of the business of the Company and, consequently, they must be held responsible or the

sale and for thus contravening the provisions of clause (5) of the Iron and Steel Control Order. This argument cannot be accepted, because it ignores the first condition for the applicability of Section 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate or by the High Court that the sale in contravention of clause (5) of the Iron and Steel Control Order was made by the Company. In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened clause (5) of the Iron and Steel Control Order, the two respondents could not be held responsible. The actual contravention was by Kamdar and Vallabhadas Thacker and any contravention by them would not fasten responsibility on the respondents.

The sentences underscored by us clearly show that what was sought to be emphasised was that there should be a finding that the contravention was by the company before the accused could be convicted and not that the company itself should have been prosecuted along with the accused. We are therefore clearly of the view that the prosecutions are maintainable and that there is nothing in Section 10 of the Essential Commodities Act which bars such prosecutions.

6. The learned counsel also invited our attention to the decisions in Durgamata Oil Mills v. Corporation of Calcutta (1978 Cri LJ 222 : 82 Cal WN 363 : (1978) 1 FAC 183), D. K. Jain v. State (AIR 1965 All 525) and Chander Bhan v. State ((1975) 2 FAC 77 (Del)). None of these cases has any application. They arose under the Prevention of Food Adulteration Act and it is unnecessary for us to consider them. The appeals are rejected.

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