

SUPREME COURT OF INDIA

M/s Precious Oil Corporation

Vs.

State of Assam

CrI.A.No.....of 2008

(Dr. Arijit Pasayat, P. Sathasivam and Aftab Alam JJ.)

05.02.2009

JUDGMENT

Dr.Arijit Pasayat, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of a learned Single Judge of the Guwahati High Court upholding the conviction of the appellants for offence punishable under Section 7(1)(a)(i) of the *Essential Commodities Act, 1955* (in short the `Act'). The allegation was that the appellant had violated Clause 3 of the Lubricating Oil and Greases (Processing, Supply & Distribution Regulation) Order, 1987 (in short the `Control Order'). Simple imprisonment of one month and fine of Rs.3,000/- each with default stipulation was awarded to the accused persons.

3. The prosecution against the accused-appellants was initiated on the basis of an offence report submitted by Sir Dhiraj Choudhury, Inspector of Food and Civil Supplies, Assam, Guwahati PW-3 alleging inter-alia that on 1-10-1996 he along with two other Inspectors of Food and Civil Supplies Department visited the processing industry of lubricating oil belonging to the appellant no.2, situated near Lankeswar, Jalukbari, Guwahati and on such inspection, it was found that the concern did not possess necessary license as required under the Control Order and also proper books of account etc as required under the law were not produced. The inspecting team found that no license could be produced for the processing unit and thereby violated Clause 3 of the Control Order. The accused had failed to obtain proper license as required under law within 6 months of commencement of processing and thereby has violated clause 5(5) of the Control Order. The inspecting team collected and sent the samples of lubricating oil for necessary analysis to thee approved laboratory. After such analysis, it was found that the said lubricating oil could not be considered as Automotive Lubricating Oil, thereby violating Clause 4 of the Control Order attracting punishment for sale of adulterated lubricating oil. The team seized from the appellants re-refined lubricating oil in 380 sealed tins of 1 litre each, 1,210 litres in 6 barrels containing 205 litres each, 19,475 litres of used lubricating oil in 95 barrels containing 205 litres in each, 20 kgs. Of

grease in one loose barrel, 920 numbers of empty tins of 1 litre capacity for TOPOL 20 W/40, one book of accounts, an extract copy of the Display Board of Stock and Prices displayed in the office premises, 3 litres of TOPOL, 20 W/46 contained in 3 sealed tins. The inspector having found prima facie violation of Clauses 3, 4 and 5(5) of the Control Order punishable under Section 7 of the Act, submitted the offence report against the appellants in the Court of the learned Sessions Judge, Kamrup for necessary prosecution under the law. The accused-appellant no.1 is the concern itself and the accused No.2 is the Proprietor of the concern and accused no.3 is an employee of the concern. On the basis of the aforesaid offence report, Sp1. Case No.5 of 97 was registered in the Court of the learned Sessions Judge, Guwahati.

4. Summons having been served, the appellants appeared in the case and vide order dated 19.8.1997, the learned trial judge explained the offences to them about allegations of contravention of Clauses 3, 4 and 5(5) of the Control Order punishable under Section 7(1)(a)(i) of the Act.

5. Accused persons pleaded not guilty and therefore trial was held. Three witnesses were examined to further the prosecution version. Appellant No.2 examined himself as DW-1. The stand of the appellants was that appellant No.2 the proprietor of the concern had applied for issuance of license under the Control Order to the competent authority. Since no action was taken even though all formalities were complied with, the High Court was approached by filing Civil Rule 2185 of 1997 for necessary directions to issue the license. The High Court by its order dated 20.5.1997 disposed of the writ petition directing the appellant to consider the case of the writ petitioners in the matter of issuance of license for processing lubricating oil and grease. It was further submitted that Inspector of Food and Civil Supplies was not authorized to conduct the inspection and/or to submit the offence report in terms of Clause 8 of the Control Order. Strong reliance was placed on a decision of this Court in *Murarilal Jhunjhunwala v. State of Bihar and Ors.*¹. The trial Court found the appellants guilty and the High Court affirmed the same. The High Court noted that different stands were taken before it. A plea relating to *Probation of Offenders Act, 1958* (in short the 'Probation Act') was rejected holding that the offence alleged was a white-collar offence.

6. Stand of the appellants in the present appeal is that no mens rea was involved. There was no sale involved and, therefore, Clause 4 of the Control Order does not apply. Even though the trial Court held that Clause 4 was not violated, it went wrong in holding that clause 3 was violated. Though the trial Court appreciated the bona fides of the appellants, yet the sentence of one month was imposed.

7. Learned counsel for the respondent on the other hand supported the judgment.

8. Clauses 3 of the Control Order read as follows:

“Restriction on Processing and Storage of Lubricating Oils and Greases- No person shall carry on the business of a processor except under and in accordance with the terms and conditions of a valid licence granted to him under this order.”

9. A bare reading of Clause 3 shows that no person is authorized to carry on business of a processor except and in accordance with the terms and conditions of a valid license granted to him under the order. The evidence of PW-3 who led the inspecting team clearly established that processing was being undertaken.

10. Clause 5 deals with application for grant or renewal of a licence. Clause 5(5) provided that all existing processors shall obtain licence under the Control Order within 6 months of the commencement thereof. Clause 6 (5) provides for making an application for renewal of licence before three months of its expiry. The Control Order has been promulgated under Section 3 of the Act.

11. At the time of inspection, large quantity of stocks and/or products was stored. Though the allegations inter-alia were that no licence was obtained, proper books of accounts were not maintained and adulterated lubricating oil was stored. The following articles were seized during inspection:

“(1) Re-refined lubricating oil (TOPOL 20-40) 380 sealed tins of one litre each, Grade-II.

(2) Re-refined lubricating oil 1, 210 litre in six barrel containing 205 litres in each.

(3) 19,475 litres of used lubricating oil in 95f barrels containing 205 litres in each.

(4) Greases 20 Kgs. in one loose barrel.

(5) 920 numbers of empty tins of one litre capacity for TOPOL 20W/40.

(6) One book of accounts having incomplete accounts of finished products.

(7) An extract copy of the display board of stocks and prices displayed in the office premises of the firm.

(8) 3 litres of TOPOL-20W/40 contained in 3 sealed tins of one litre each (for sample)”

12. Although the accused persons took the plea that there was no sale, but interestingly there was display board showing stocks and prices of the articles. This itself was indicative of the fact that sale transactions were being carried on. The trial Court and the High Court had rightly decided that there has been contravention of Clause 3 of the Control Order. In that view of the matter the conclusions cannot be faulted. Coming to the question whether the Probation Act can be applied, this Court had an occasion to with the same.

13. The rehabilitary purpose of the Probation Act is pervasive enough technically to take within its wings an offence even under the Act. The decision in *Ishar Das v. State of Punjab*²

is authority for this position. Certainly, "its beneficial provisions should receive wide interpretation and should not be read in a restricted sense". But in the very same decision this Court indicated one serious limitation:

“Adulteration of food is a menace to public health. The Prevention of Food Adulteration Act has been enacted with the aim of eradicating that anti-social evil and for ensuring purity in the articles of food. In view of the above object of the Act and the intention of the Legislature as revealed by the fact that a minimum sentence of imprisonment for a period of six months and a fine of rupees one thousand has been prescribed, the courts should not lightly resort to the provisions of the Probation of Offenders Act in the case of persons above 21 years of age found guilty of offences under the Prevention of Food Adulteration Act”

14. The kindly application of the probation principles is negated by the imperatives of social defence and the improbabilities of moral proselytisation. No chances can be taken by society with a man whose anti-social operations, disguised as a respectable trade, imperil numerous innocents. He is a security risk. Secondly, these economic offences committed by white-collar criminals are unlikely to be dissuaded by the gentle probationary process. Neither casual provocation nor motive against particular persons but planned profit-making from numbers of consumers furnishes the incentive - not easily humanised by the therapeutic probationary measure. It is not without significance that the 47th report of the Law Commission of India has recommended the exclusion of the Act to social and economic offences by suitable amendments. It observed:

“We appreciate that the suggested amendment would be in apparent conflict with current trends in sentencing. But ultimately, the justification of all sentencing is the protection of society. There are occasions when an offender is so anti-social that his immediate and sometimes prolonged confinement is the best assurance of society's protection. The consideration of rehabilitation has to give way, because of the paramount need for the protection of society. We are, therefore, recommending suitable amendment in all the Acts, to exclude probation in the above cases.” (p. 85).

15. In the current Indian conditions the probation movement has not yet attained sufficient strength to correct these intractables. Maybe, under more developed conditions a different approach may have to be made. For the present we cannot accede to the invitation to let off the accused on probation.

16. The aforesaid position was also highlighted in *Pyarali K. Tejani v. Mahadeo Ramchandra Dange and Ors.*³.

17. Above being the position, there is no merit in this appeal which is accordingly dismissed.

¹(AIR 1991 SC 515)

²(1973 (2) SCC 65)

³(1974 (1) SCC 167)