

GUJARAT HIGH COURT

State of Gujarat

Vs.

Chimanlal Maganlal Shah

Criminal Revn. Application No. 407 of 1972

(J.M. Sheth, J.)

30.09.1970. 06.02.1973

JUDGMENT

J. M. Sheth, J.

1. This is a revision petition filed by the State of Gujarat under Section 435 of the Criminal Procedure Code against an order passed by the learned Additional Sessions Judge, Kaira at Nadiad, in Criminal Appeal No. 264 of 1970, allowing the appeal and setting aside the order passed by the Collector, Kaira District, confiscating 314 tins of groundnut oil. The learned Additional Sessions Judge has further directed the Collector to determine the price of the goods seized under the provisions of Sub-Section (3)(b) of Section 3 of the Essential Commodities Act, 1955 (which will be hereinafter referred to as "the Act"), and to pay the amount so determined, with reasonable interest thereon. This order is dated 16th June, 1972.

2. The aforesaid appeal was filed by the present opponent Chimanlal Maganlal Shah, Partner and Manager of M/s. Chimanlal Maganlal Shah of Nadiad, under Section 6-C of the Act, against the order passed by the Collector of Kaira District, dated 30th September, 1970, ordering confiscation of 314 tins of ground-nut oil of the present opponent under Section 6-A of the Act. Opponent is a dealer in ground-nut oil and other articles at Nadiad and holds a license under the provisions of Gujarat Ground-Nut Dealers Licensing Order, 1966 ("which will be hereinafter referred to as "the licensing Order"). On receipt of some information that the opponent was contravening the provisions of the Licensing Order and the terms of the licence, and was not maintaining proper accounts and registers. Supply Inspector, Kaira, raided his shop on 22nd September, 1970, at about 2.30 p.m. He found "that there were certain irregularities in the maintenance of books of accounts and stock register of ground-nut oil and thereby he had committed breach of conditions Nos. 3 and 10 of the License issued to him. 314 tins of groundnut oil, which were found lying in stock with him were seized by the Supply Inspector. He had also seized books of accounts, bill books and other relevant documents there from. After due

inquiry. Supply Inspector made a report to the Collector recommending that action should be taken against the opponent for committing breaches of conditions Nos. 3 and 10 of the License and 314 tins of ground-nut oil seized there from should be confiscated. A show cause notice was issued by the Collector to the opponent on receipt of the said report under Section 66-B of the Act. In that notice several charges were framed against the opponent. After giving him a personal hearing, the Collector Kaira, passed an order on 30th September 1970, confiscating 314 tins of groundnut oil seized.

3. Against that order of confiscation, the opponent filed an appeal. That appeal was formerly heard by learned Sessions Judge, Mr. V.R. Bhatia. He dismissed the appeal confirming the order of confiscation passed by the Collector, by his order, dated 4th February, 1971.

4. Being aggrieved by that order, opponent filed Special Criminal Application No. 5 of 1971 in this Court under Article 227 of the Constitution of India. That application was heard by a Division Bench of this Court and by an order, dated 10th January, 1972, that application was allowed and the order passed by learned Sessions Judge, Mr. V.R. Bhatia, was set aside and the case was remanded for consideration of the following two points :

- (1) Whether there was no charge that the alleged breaches were in respect of these very tins which had been confiscated ?
- (2) Whether the order of confiscation is based upon extraneous consideration and hence illegal ?

The learned Additional Sessions Judge, on consideration of the evidence, came to the conclusion that there was no proof of the fact that the alleged breaches were in respect of these very tins which have been confiscated, and consequently, the act of the seizure of the goods and the order of confiscation are illegal. In that view of the matter, he did not decide the second point, whether the order of confiscation was based upon extraneous consideration and hence illegal.

5. Being aggrieved by that order, the State has preferred the present revision application.

6. Mr. N.H. Bhatt, appearing for the opponent, has raised a preliminary objection that this revision petition filed under Section 435 of the Criminal Procedure Code is not competent. Submission made by him in that behalf is that the impugned order is an order passed by the Judicial authority, empowered to hear such appeals against the order of confiscation passed by the Collector. It could not be said that the order has been passed by any inferior Criminal Court so that this Court can exercise such revisional powers under Section 435 of the Criminal procedure Code.

7. Section 6-A of the Act reads : "Where any food grains, edible-oilseeds or edible oils are seized in pursuance of an order made under Section 3 in relation thereto, they may be produced, without

any unreasonable delay, before the Collector of the district or the Presidency town in which such food grains, edible oilseeds or edible oils are seized and whether or not a prosecution is instituted for the contravention of such order, the Collector, if satisfied that there has been a contravention of the order, may order confiscation of the food grains, edible oilseeds or edible oils."

It is in exercise of Powers vested in the Collector under this Section 6-A of the Act that he passed the order of confiscation of 314 tins of ground-nut oil on 30th Sept., 1970.

8. Section 6-B of the Act enjoins a duty upon the Collector not to pass such order without issuing show-cause notice. Such show-cause notice was issued and thereafter the Collector passed the impugned order of confiscation.

9. Section 6-C of the Act, which is material for our purposes, reads :

"(1) Any person aggrieved by an order of confiscation under Section 6-A may, within one month from the date of the communication to him of such order, appeal to any judicial authority appointed by the State Government; concerned and the judicial authority shall, after giving an opportunity to the appellant to be heard, pass such order as it may think fit, confirming, modifying or annulling the order appealed against. It is in pursuance of this power vested in the judicial authority appointed that the appellant was heard and the order of confiscation passed by the Collector was set aside.

10. Section 17 of the Criminal Procedure Code, 1898, reveals that all judicial Magistrates appointed under Sections 12, 13 and 14, and all Benches constituted under Section 15 shall be subordinate to the Sessions Judge.

11. Section 17(3) of the Criminal Procedure Code reveals that all Assistant Sessions Judges shall be subordinate to the Sessions Judge in whose Court they exercise jurisdiction.

12. Section 17-A of the Criminal Procedure Code deals with subordination of executive Magistrates to the District Magistrates. Section 17-B of the Criminal Procedure Code indicates that Courts of Session and Courts of Magistrates including Courts of Presidency Magistrates shall be Criminal Courts inferior to the High Court and Courts of Magistrates outside Greater Bombay shall be Criminal Courts inferior to the Court of Session.

13. On referring to all these provisions, it cannot be said that the impugned order has been passed by any such inferior Criminal Court.

14. Section 435(1) of the Criminal Procedure Code reads :

"The High Court or any Sessions Judge other than the Sessions Judge of the Court of Session for Greater Bombay, may call for and examine the record of any proceeding

before any inferior Criminal Court situate within the local limits of its or his "jurisdiction for the purpose of satisfying itself or himself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court, and may, when calling for such record, direct that the execution of any sentence or order be suspended....."

In the instant case, it cannot be said that the impugned order which is sought to be set aside in this revision petition is the order, passed by an inferior Criminal Court situated within the local limits of this Court.

15. Mr. Bhairaviya, appearing for the State, has not been able to point out any provision or any decision to indicate that this Court can interfere in such revision petitions against such orders passed by the Judicial authority contemplated under Section 6-C of the Act. I am of the opinion that against the impugned: order passed by such judicial authority, as contemplated by Section 6-C of the Act, such revision petition cannot be entertained by this Court. I, therefore, uphold the preliminary objection raised by Mr. Bhatt on behalf of the opponent and hold that this Court has no jurisdiction to entertain such revision application.

16. Revision application is dismissed on that ground and rule is discharged.
Revision dismissed.