

(2000) 12 AHC CK 0128

Allahabad High Court (Lucknow Bench)

Case No: Criminal Appeal No. 273 of 1986

Ram Chandra

APPELLANT

Vs

State of U.P.

RESPONDENT

Date of Decision: Dec. 8, 2000

Acts Referred:

- Essential Commodities Act, 1955 - Section 7
- Rice Milling Industry (Regulation) Act, 1958 - Section 15

Citation: (2001) 2 ACR 1291

Hon'ble Judges: S.K. Agarwal, J

Bench: Single Bench

Advocate: Deo Shanker Tewari, K.K. Dixit and K.K. Srivastava, for the Appellant; G.A., for the Respondent

Final Decision: Allowed

Judgement

S.K. Agarwal, J.

List has been revised. None is present to press this appeal nor any body made any mention. In the result, I propose to conclude the hearing of this appeal with the assistance of learned A.G.A.

2. I have gone through the judgment of the learned Special Judge, Unnao, Sri P. S. Malhotra who vide his judgment and order dated 17.3.1986 had convicted the Appellant u/s 7 of the Essential Commodities Act and awarded him a sentence of 3 months R. I. Aggrieved by the above said order and judgment, the present appeal was instituted by the Appellant.

3. Brief facts of the case are that on 13.10.1982, Marketing Inspector Sri Sri Pal had visited the rice huller of the Appellant. From the inspection, it was found that the Appellant has no license for carrying on the rice hulling operations. It was also found that about 22.5 Qs. of rice was lying in the mill out of it about 1.40 Q. of rice was found in a broken condition and rest of the rice was in bags. 5 bags of wheat

apart from it was also found there. Each bag contained 1 Q. The recovery memo, Ext. Ka-1 was prepared regarding the abovesaid food grains. A report was lodged by Marketing Inspector at P.S. Achalganj. After conclusion of the Investigation, a charge-sheet was submitted.

4. The prosecution in support of its case examined 3 witnesses. Out of them Sri Sri Pal, P.W. 1, is Marketing Inspector. Rest of the witnesses are formal in nature. P.W. 2, Head Constable, had prepared Ex. Ka-2, the F. I. R. General Diary entry is Ex. Ka-3. S. I. Shyam Sundar Tripathi, P.W. 3, conducted the investigation and submitted a charge-sheet against the Appellant. It is further brought on record that the original F.I.R. was reported to be lost so Ex. Ka-2 which is a carbon copy of that F.I.R., therefore, was brought on record by the prosecution. Since the defence has not challenged this carbon copy of the F.I.R., therefore, this question is not to be gone into by this Court.

5. The defence case is of denial. It is asserted by the Appellant that the rice recovered from his premises did not belong to him but was left by D. W. 1, Deshraj and D. W. 2, Badalu. These two witnesses corroborated the case of the Appellant but their testimonies are of no consequence. They were got up witnesses and their evidences cannot be relied upon. A very strange course has been adhered to by the Special Judge in dropping the charge against the Appellant of running the rice huller without a license on the ground that no complaint was filed as required u/s 15 of Rice Milling Industries (Regulation) Act, 1958. This Act lays down that "No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by the licensing officer or any person duly authorised by the Central Government or the licensing officer in this behalf." The Court has interpreted the abovesaid provision to mean that it is necessarily indicating to the filing of a complaint by the licensing authority or any person who was authorised to do so by him or by Central Government. On the abovesaid basis, he had dropped the charge of running a rice huller without a license against the Appellant. The Government has not preferred any appeal or revision against the dropping of the charge and acquittal of the Appellant for that charge. However, the learned Sessions Judge has convicted the Appellant for possession of 22.5 Qs. rice besides 5 Qs. of wheat. In all 27.5 Qs. of foodgrain at his premises was found. Since his possession was found by him to be in complete violation of Sub-clause (1) of Clause 3 of U.P. Foodgrains Dealers" (Licensing and Restriction on Hoarding) Order, 1976, he proceeded to convict the accused. In my opinion, this approach, adhered to by the learned Special Judge is not justifiable once the prosecution of the Appellant was dropped for running the rice huller without a valid licence. The fact that rice huller was in existence remains undisputed. The Appellant could have only been convicted for having no licence for operating a huller but he vice versa could not have been convicted for running a business in foodgrain on the assumption that his possession of so much foodgrain was in excess of minimum permissible quantum for any person. The abovesaid order has

declared possession of any individual of foodgrain upto 10 Qs. lawful. The entire charge brought against the Appellant was dependent upon his running rice huller. Once the charge against him for operating the rice huller without a licence is dropped for whatever reason, his possession of two foodgrain items cannot otherwise be declared an offence in contravention of the provisions of the abovesaid order and it cannot be otherwise re-considered once that charge fell. The prosecution of the applicant will depend upon his non-possession of a licence and the dropping of charge on that count will not entail any other consequence against him. Thus, against the Appellant such a course as adhered to by the Special Judge is not permissible in law, especially when the entire case against the Appellant rests on the above ground alone that he was operating a rice huller.

6. The Special Judge, in my opinion, has misread the language of Section 15 of the Rice Miller Industries Regulation, 1958. It does not clearly mean that a complaint is required by the licensing authority or any person to whom this power was delegated by the Central Government or the licensing officer. It can very well be brought through a F.I.R. and the charge-sheet shall be treated as a complaint by that officer himself since he allowed the police to investigate and prosecute the accused. The charge-sheet is to be filed under the authority of licensing officer, once this authority is granted charge-sheet submitted by police will amount to an accusation brought before the Court by such an officer in writing. The conviction, therefore, cannot be upheld u/s 7 of Essential Commodities Act for the reasons detailed above.

7. In the result, this appeal succeeds and is allowed. The conviction of the Appellant u/s 7 of the Essential Commodities Act and his consequent sentence of 3 months R. I. is hereby set aside. He is acquitted. He is on bail. He need not surrender. His bail bonds are cancelled and surety bonds are hereby discharged.