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**(1968) 10 MP CK 0008**

**Madhya Pradesh High Court**

**Case No:** Criminal Revision No. 14 of 1968

Badriprasad and  
another

APPELLANT

Vs

State of M.P.

RESPONDENT

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**Date of Decision:** Oct. 16, 1968

**Acts Referred:**

- Essential Commodities Act, 1955 - Section 3, 7, 7(1)

**Citation:** (1972) J LJ 9

**Hon'ble Judges:** P.K. Tare, J

**Bench:** Single Bench

**Advocate:** Sardar Rajendra Singh, for the Appellant; A.N. Mukerji, for the Respondent

**Final Decision:** Allowed

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### **Judgement**

@JUDGMENTTAG-ORDER

Tare, J.

This is a revision by the accused against their conviction u/s 7(1) of the Essential Commodities Act, 1955, for contravention of Clause 3 of the Madhya Pradesh Sugar Dealers Licensing Order 1959, passed by the Magistrate 1st Class, Mandla, in Criminal Case No. 612 of 1965, dated 23-4-1966, as affirmed by the Additional Sessions Judge, Mandla, in Criminal Appeal No. 139 of 1967, dated 15-11-1967.

2. It has not been disputed by the prosecution and moreover, it is amply established from the material on record that prior to the date of the alleged offence, which was said to have taken place on 30-6-1961, the petitioners, who are the real brothers and were carrying on business at 3 different places, namely, at Mandla, at Bamni-bazar and at Nainpur, all situated in Mandla district. In those shops they used to deal in controlled commodities, which might be governed by different orders passed u/s 3 of the Essential Commodities Act, 1955. They held separate licences in respect of the three shops located at these

places. However, just before the alleged offence they had surrendered those licences to the authorities on account of some difference with the local authorities. We are not concerned with the details of those differences.

3. It is further not disputed by the defence that on the date of the occurrence the petitioners did not hold any licence issued under Clause 3 of the M.P. Sugar Dealers Licensing Order, 1959, and that they carried in a truck 80 bags of sugar, which was meant to be delivered to them at Nainpur and Bamni-bazar respectively. According to the defence, 45 bags were to be delivered at their shop in Nainpur; while 35 bags were to be delivered at their shop at Bamni-bazar.

4. However, the prosecution alleged that 80 bags were meant to be delivered to the petitioners irrespective of the fact as to where and in what quantity they were to be delivered. Therefore, the prosecution alleged that the petitioners having imported into Mandla district more than 137 maunds of sugar at one time, were guilty of contravention of Clause 3 of the M.P. Sugar Dealers Licensing Order, 1959.

5. So far as the defence contention is concerned that 45 bags were meant to be delivered at Nainpur and 35 bags at Bamni-bazar, the said fact is amply corroborated by the material tendered on behalf of the prosecution. Not only the prosecution witnesses almost all supported that allegation, but the documentary evidence was furnished by the prosecution itself to indicate that Ramkrishna, broker, (P. W. 9) had purchased 80 bags of sugar for the petitioners from Nanhelal (P. W. 6), proprietor of the Mithana Vikreta Sangh, Jabalpur, Out of the said 80 bags, 45 had been purchased in one lot for delivery at Nainpur; while 35 bags had been purchased in another lot and meant to be delivered at Bamni-bazar. Undoubtedly, both the shops situated at these two places belonged to the petitioners. These 80 bags were transported in the truck belonging to Jamnalal (P. W. 1) The said truck was being driven by the driver, Abdul Majid (P. W. 2). Some of these witnesses were declared hostile by the prosecution as they refused to support the prosecution case that 80 bag were meant to be delivered at Mandla only. As already observed by me earlier, these 80 bags were to be delivered at two different places and this fact is amply established from the material on record furnished by the prosecution itself. In this connection I might also refer to the testimony of Shri P.G. Kothari (P. W. 3), Food Officer, Dharamchand Jain (P. W. 4), and Dharampal (P. W. 5), Food Procurement Inspector, which clearly indicates that these 80 bags were not to be delivered to the petitioners at Mandla. But they were meant to be delivered at Nainpur and Bamni-bazar. However at the Mandla Octroi-post Mohanlal (P. W. 7), the Tax-Collector, collected Octroi-duty from the petitioners, which the petitioners paid, probably under protest. It is rather surprising that this Municipality collected Octroi-duty on goods merely passing through Mandla Municipal limits; which were not meant to be unloaded at Mandla. However illegal the action of the Municipality may be, we are not concerned with that aspect in the present case. But this defence suggestion, in my opinion, is fully established from all this evidence, as also the documentary evidence furnished by the prosecution itself.

6. Therefore, we have to proceed on the basis that the petitioners imported into Mandla District 80 bags of sugar without holding a licence and 45 of those bags were meant to be delivered to them at their Nainpur shop; while 35 bags were intended for their Bamni-bazar shop. The question arises whether the petitioners committed any offence.

7. The Essential Commodities Act, 1955, does not provide any clue in this matter except that section 3 of the said Act empowers the Central Government or the State Government to issue different orders for controlling the price distribution etc., of certain essential commodities; while section 7 of the said Act provides for penalties for contravention of any order made u/s 3 of the Act. It would, therefore, be relevant to advert to the M.P. Sugar Dealers Licensing Order, 1959, which was the order in force at the date of commission of the offence. The said order has subsequently been amended in the year 1963. However, we are not concerned with the amended order. Clause 2(a) of the M.P. Sugar Dealers Licensing Order, 1959, defines a "dealer" as under. -

"Dealer means a person engaged in the business of purchase, sale or storage for sale, of sugar in quantities exceeding 137 maunds at any one time, but does not include an industrial undertaking which is engaged in the manufacture or production of sugar and which is registered or licensed under the Industrial (Development and Regulation) Act, 1951."

Sub-Clause (c) of the said Clause defines "Licensing Authority" as the Collector of the District having jurisdiction over the area in which a dealer carries on his business and shall include such other officer as the State Government may by notification appoint in this behalf for any area specified therein,

Clause 3, of the said order provides for licensing of dealers. It is as follows : --

"Sub-Clause (1)--No person shall carry on business as a dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by the licensing authority.

Sub-Clause (2)--A separate licence shall be necessary for each place of business.

Sub-Clause (3)--For the purpose of this clause, any person who stores sugar in any quantity exceeding 137 maunds at any one time shall unless the contrary is proved, be deemed to store the sugar for the purpose of sale."

Clause 4, relates to the method of issuing a licence as also the form prescribed by the same. We are not concerned with the other clauses of the said order.

8. The said order prescribes certain forms :

Form-B, prescribed in Clause 4(2) of the Order especially condition 3 of the said Form provides that the licensee shall maintain a register of daily accounts for sugar showing

correctly :--

- (a) the opening stock on each day;
- (b) the quantities received on each day showing the place from where and the source from which received;
- (c) the quantities delivered or otherwise removed on each day showing the places of destination; and
- (d) the closing stock on each day.

The said term further provides that the licensee shall complete his accounts for each day on the day to which they relate, unless prevented by reasonable cause the burden of proving which shall be upon him. It further provides that separate registers should be maintained for khandsari sugar. Term number 4 prescribes that the licensee shall submit to the licensing authority concerned a true return, in Form C, of the stock, receipts and deliveries of each of the sugar every fortnight (1st to 15 and 16th to end of the month), so as to reach him within five days after the close of the fortnight.

9. Thus, a dealer is required to maintain a separate account of the stock as also the accounts of purchase and sales of sugar at his shop, which necessarily relates to a place of business. Suppose if a dealer has 10 shops and if he were to maintain joint account of all the 10 shops, his action will clearly be illegal and will be in contravention of the provisions of the said Order, as also the provisions of the prescribed Form. Thus, it appears that for the purpose of the said Order, a shop with reference to the place of business is the unit and one of the rules of interpretation is to interpret the statute in a manner which would harmonise the different provisions and would not render it an absurdity or would not make a nonsense of the legislation.

10. Looked at from this point of view, I am of opinion that the word "dealer" in Clause 2(a) of the order has necessarily to be read with the provisions of Clause 3 of the said order. Therefore, the limit of 137 maunds mentioned in the definition of a dealer would necessarily be co-related to each, place of business where a person may be carrying on his business of selling the controlled commodity. If this had not been the intention of the legislature, there would have been no point in providing that a licence shall be obtained in respect of each place of business. Therefore, I am clearly of opinion that the unit to be considered is the place of business of a person and the definition of a dealer has to be understood in the light of this fact and the same cannot be read in isolation or divorced from that fact to suggest that any person who has in his possession 137 maunds of sugar or who purchases or sells sugar of more than 137 maunds at any one time is to be considered a dealer. According to the prosecution, the petitioners imported 220 maunds of sugar in a truck without a licence and for that reason it was alleged that they committed a contravention of Clause 3 of the Order. But, if the definition of a dealer is to be understood in the light of the provisions of Clause 3 of the Order, it necessarily means

that the dealer must have in his possession more than 137 maunds of sugar at his place of business or he must sell or purchase more than 137 maunds of sugar with reference to his place of business. If he has more than one place of business, the question whether he is a dealer will depend on the further fact whether at that particular place of business he deals in sugar more than 137 maunds. If a person purchases in two lots more than 137 maunds of sugar for 2 or 3 places of business, he, in my opinion, does not commit any contravention of Clause 3 of the said Order.

11. In the present case it has been amply established that the 80 bags of sugar weighing 220 maunds were meant to be delivered at Nainpur and Bamni-bazar--45 bags at Nainpur and 35 bags at Bamni-bazar. The petitioners, therefore, could possess or could purchase or could sell less than 137 maunds of sugar with reference to one place of business and if they happened to have many places of business, their status as a dealer will have to be ascertained with reference to the quantity to be dealt with at each place of business. As such, it is clear that the petitioners cannot be said to have committed any contravention of Clause 3 of the M.P. Sugar Dealers Licensing Order, 1959, so as to be punishable u/s 7(1) of the Essential Commodities Act, 1955.

12. It was urged by the learned Government Advocate that the phrase "dealer" ought to be understood in the sense of an individual person. I may observe that that suggestion cannot be accepted, as it will lead to fallacies and anomalies. It would certainly not mean that if there are two partners of a Firm each one of them would be entitled to deal with 137 maunds of sugar at any one time. The limit is necessarily with reference to the business carried on at a place of business and it has no connection with the person doing the business or the other factors. But, it has necessarily to be co-related to the, business carried on at any particular place, which means a shop as a unit, and not a person as a unit. Therefore, the limit of 137 maunds clearly applies to the shop or to the place of business and not to person carrying on the business.

13. For the reasons aforesaid, I am unable to accept the view of the learned Judges of the Courts below that the petitioners were guilty of a contravention of Clause 3 of the Order, merely because the total quantity imported by them for their two shops exceeded the limit of 137 maunds. In my opinion, the limit of 137 maunds is applicable to one place of business and from this point of view the petitioners' conviction cannot be sustained in law.

14. As a result, this revision succeeds and is accordingly allowed. The petitioners' conviction is set aside and the sentence of fine passed on them is quashed. It is further directed that the fine, if recovered from them, be refunded to them.