
(1978) 26 BLJR 367

Patna High Court

Case No: Criminal Writ J.C. No. 89 of 1977

Mewalal Kapildeo
Prasadand

APPELLANT

Vs

State of Bihar and
Others

RESPONDENT

Date of Decision: Jan. 20, 1978

Acts Referred:

- Essential Commodities Act, 1955 - Section 3, 6A, 7

Citation: (1978) 26 BLJR 367

Hon'ble Judges: Shivanugrah Narain, J; Nagendra Prasad Singh, J

Bench: Division Bench

Final Decision: Allowed

Judgement

Nagendra Prasad Singh, J.

This writ application has been filed on behalf of the petitioner-firm for quashing an order dated 3-5-1975 passed by the respondent-District Magistrate, Gopalganj in purported exercise of the powers conferred on him u/s 6A of the Essential Commodities Act, 1955 (hereinafter referred to as the Act). By that order the respondent-District Magistrate confiscated 189 tins of mustard oil weighing 16 kg. each and 60 tins of mustard oil weighing 4 kg. each, which were found in the premises of the petitioner-firm, taking the view that the petitioner-firm had contravened the provisions of the Bihar Edible Oil Wholesale Dealer's Licensing Order, 1966 (hereinafter referred to as the said Licensing Order). He also directed the Sub-divisional Officer to dispose of the articles in question through public distribution system and to deposit the sale proceeds according to the Government instructions. A copy of that order is Annexure 2 to the writ application. An appeal filed on behalf of the petitioner before the Commissioner was also dismissed affirming the finding of the respondent-District Magistrate. A copy of that order is Annexure 1 to the writ application.

2. According to the petitioner, it made an application for wholesale dealer's licence under the provisions of the aforesaid Licensing Order before the authority concerned on 18-12-1973. After due enquiry, a report was submitted to the Sub-divisional Magistrate recommending for the grant of the licence. On 15-1-1974, the Sub-divisional Magistrate approved the proposal saying "as proposed". Thereafter the petitioner deposited the licence fee of Rs. 20.00 for one year, which was accepted after deposit being made through chalan in the treasury. Actual licence, however, was not granted to the petitioner, but the petitioner-firm started carrying on the business in edible oil as a wholesale dealer because it was told that the licence would be forwarded to it in due course. According to the petitioner, officer of the Supply Department inspected the records of the petitioner-firm as also the relevant registers maintained by the petitioner. Road permits were also granted by the Sales-tax Department for carrying the stock of mustard oil to the premises of the petitioner. The petitioner claims to have filed fortnightly returns showing the position of the stock of mustard oil, which were duly checked by the competent officers of the department periodically. However, on 30-10-1974 a raid was made in the business premises of the petitioner and, for the first time, an objection was taken by the raiding party that the petitioner was carrying on the business in edible oil as a wholesale dealer without a licence. The raiding party during the raid seized the aforesaid stock of mustard oil and filed a criminal case before the Chief Judicial Magistrate, Gopalganj alleging that the petitioner has contravened the provisions of the aforesaid Licensing Order as it was carrying on the business in edible oil without licence.

3. On the basis of the seizure of the mustard oil tins a confiscation proceeding was also initiated by the respondent-District Magistrate and the petitioner was asked to show cause as to why those tins of mustard oil should not be confiscated. The petitioner appeared before the respondent-District Magistrate and filed its show-cause in which it stated about its application being filed for a licence on 18-12-1973 as well as the deposit of licence fee by chalan. It also asserted that it was submitting return in accordance with the provisions of the aforesaid Licencing Order and has also got road permit from the Sales-tax Department for bringing mustard oil. On the aforesaid assertion, it was claimed on behalf of the petitioner that there was no mens rea on the part of the petitioner to contravene the provisions of the said Licensing Order and it was carrying on the business under a bonafide belief which was based on a reasonable basis that the licence had been granted in its favour. The said claim was however, rejected by the District Magistrate as well as by the Commissioner on the view that there has been an amendment of Section 7 in the year 1967 by the Parliament as a result whereof it was no more open to the petitioner to take a plea of absence of mens tea and even in cases where the contravention was unintentional the person concerned could be held to have contravened the provisions of any such Licencing Order.

4. To appreciate the reasons given by the two authorities, some legislative history of Section 7 of the Act has to be mentioned. Prior to the amendment of Section 7 of the Act by the Essential Commodities (Second Amendment) Act, 1967 (Act 36 of 1967),

Sub-section (1) of Section 7 was as follows:

If any person contravenes any order made u/s 3." then he shall be punishable for different periods mentioned in that section. Questions arose before different Courts as to whether the contravention referred to in this Sub-section (1) of Section 7 of the Act covers cases of only intentional contravention with the requisite mens rea or will also cover cases where contraventions are made unintentionally. However, in the case of [Nathulal Vs. State of Madhya Pradesh](#), the Supreme Court had to deal with the case of a dealer who had been convicted for an offence u/s 7 of the Act, as he had been found to be carrying on business in foodgrains without a proper licence, although it had been found that he had made an application for licence under the Madhya Pradesh Foodgrains Dealers Licensing Order, 1958 and had also deposited the requisite licence fee ; no intimation to him was sent that his application was rejected. Under the impression that Licence had been granted to him, he purchased foodgrains from time to time and submitted returns to the Licensing authority. His godowns were also checked. In that situation, it was held by the Supreme Court that although no licence had been granted to the accused concerned, mens rea, which is an essential ingredient had not been proved and on that finding the accused was acquitted holding that he was not guilty. By the aforesaid amending Act (Act 36 of 1967), Sub-section (1) of Section 7 of the Act was amended. The words "If any person contravenes any order made u/s 3" were substituted by the word and figure "If any person contravenes, whether knowingly, intentionally or otherwise any order made u/s 3." Perhaps the object of introducing this amendment to cover even the cases where the mens rea was not established, i.e., if the contravention was unintentional. The respondent-District Magistrate and the respondent-Commissioner have held that even if the assertion made on behalf of the petitioner is accepted still it will deem to have contravened the provisions of the Licensing Order because of this amendment in Sub-section (1) of Section 7 saying that even if the contravention was unintentional, the petitioner will be liable to punishment because of the change in law. I must, however, point out that on the relevant date, i.e., on 30-10-1974, when the raid was made the amendment which had been introduced in Sub-section (1) of Section 7 by the Act 36 of 1967, itself was deleted by the Essential Commodities (Amendment) Ordinance, 1974, which was published in the Central Gazette dated 22-6-1974. This Ordinance was replaced by the Essential Commodities (Amendment) Act, 1974 (Act 30 of 1974) which received the assent of the President on 29-8-1974. The relevant portion of Sub-section (1) was restored as it was prior to its amendment by Act 26 of 1967. The words whether knowingly, intentionally or otherwise" were deleted. In my opinion, the effect of this amendment will be that since that date the position was restored as it was when the said sub-section was considered by the Supreme Court in the aforesaid Nathulal's case (supra). In view of this amendment, before an accused person can be held to be guilty for having contravened any provision of the Licensing Order, it must be established that he had the necessary mens rea. If on the other hand, it is found that the contravention was "unknowingly and unintentionally, he cannot be held guilty for contravention of any such provision. I have already pointed out that the two authorities have proceeded on the

assumption that the contravention was not intentional. The respondent-Commissioner has mentioned in his order that the facts are not in dispute. Even before this Court the petitioner has stated on affidavit about filing of application for grant of licence, the orders passed by the Sub-divisional Officer, deposit of licence fee by chalan and inspection made by the authorities concerned. It has also been stated on behalf of the petitioner about the retrurn having been filed from time to time. The counter-affidavit filed on behalf of the respondents is vague. About many assertion it has been simply stated that the deponent has no knowledge about those facts. About some statements it has been stated in the counter affidavit that the District Supply Officer had appeared before the Collector on behalf of the State, but for reasons best known to him, he did not disclose the relevant facts. In such a situation, I am left with no option but to accept the assertions made on behalf of the petitioner and to, hold that the petitioner was carrying on business in edible oil as a wholesaler under a bona fide belief which has reasonable basis and the mens rea for the contravention of the provisions of the Licensing Order has not been "established. Learned counsel for the State, however, has drawn our attention to a judgment of the Supreme Court in the case of Sopana Trimbak Wani v. State of Maharashtra 1977 C.L.J. 337, and has submitted that the claim of bonafide belief of the accused person of that case that he was authorised to export foodgrains outside the State was not accepted. The facts of that case are entirely different. In the judgment it was pointed out that the permits, on the basis of which this defence was taken, had been issued to the accused concerned for the purpose of enabling him to sell, but it did not enable him to export the foodgrains outside the State of Maharashtra. The facts of the present case are more or less similar to the facts which were considered by the Supreme Court in the aforesaid case of Nathulal (supra). The respondents, Commissioner and the District Magistrate, have also placed reliance on the judgment of a learned single Judge of this Court in the case of Indira Devi and Ors. v. State of Bihar 1974 B.L.J.R. 437. In that case the learned Judge of this Court on the materials on the record had held that necessary ingredient of metis rea was established, and, as such, it has no bearing to the facts of the present case.

5. Now one question, which is still to be answered, is as to whether the principle which is applicable for criminal trial is also applicable to a proceeding for confiscation u/s 6A of the Act. By a reference to Section 6A it will appear that the condition precedent to the exercise of the jurisdiction by the Collector is that there has been contravention of the order made u/s 3 of the Act and the articles in question have been seized in accordance with the provisions of any such order. Sub-section (1) of Section 7, which is the penal provision, also says that a person shall be punishable if he has contravened any order made u/s 3. Therefore, for confiscation as well as for conviction it must be established that the person concerned has contravened any order made u/s 3. It is a well settled rule of interpretation that a word occurring in the same Act is usually to be given the same meaning unless a different intention is expressed by the provisions of the Act. As such, the word "contravention" has to be interpreted in Section 6A and in Section 7 to mean that the provision of any order framed u/s 3 of the Act has been contravened intentionally. On the other hand, if it is found that the contravention was unintentional and the person

concerned had taken all reasonable care and was carrying on the business in a bonafids manner then, in my view, even for Section 6A of the Act, it has to be interpreted that in the eye of law there has been no contravention so as to visit the dealer with the consequences of confiscating the articles which had been seized. A similar view has been expressed by a learned single Judge of Allahabad High Court in the case of [Kishori Lal Bihani Vs. The Addl. Collector and District Magistrate, Kanpur and Others,](#) . The learned Judge has rightly pointed put, if I can say so with respect, that Section 6A and Section 7 are in pari materia, and, as such, the same meaning is to be given to the words used in the two sections. The result is that it has to be held that the order of confiscatiop passed by the respondent-District Magistrate, which has been affirmed by the respond ent-Comissioner, is illegal because the necessary ingredient of Section 6A has not been estabysghed. As such there is an error apparent on the face of the record and the two orders have been passed in violation of the provisions of the Act, which has caused substantial injury to the petitioner.

6. In the result, I allow this writ application and quash the two orders in question, contained in Annexures 1 and 2. We are informed that the articles in question have been sold as directed by the District Magistrate. In such a situation, the petitioner is entitled to get the price along w.ith reasonable interest thereon to be calculated in accordance with the provision of Sub-section (2) of Section 60 of the Act, and I order accordingly.

Shivanugrah Narain, J.

7. I agree.