
(1967) 01 MAD CK 0039

Madras High Court

Case No: None

In Re: K.T. Kosalram
and Others

Vs

APPELLANT

RESPONDENT

Date of Decision: Jan. 5, 1967

Acts Referred:

- Imports and Exports (Control) Act, 1947 - Section 5
- Penal Code, 1860 (IPC) - Section 120B

Citation: AIR 1968 Mad 113 : (1968) CriLJ 329

Hon'ble Judges: Krishnaswami Reddy, J

Bench: Single Bench

Judgement

Krishnaswami Reddy, J.

The appellants have been convicted by the Chief Presidency Magistrate, Madras, u/s 5 of the Imports and Exports (Control) Act 1947, read with Clause 5 of the Imports (Control) Order 1955, and u/s 120-B I.P.C. read with the above sections. The first accused has been sentenced u/s 120-B to undergo rigorous imprisonment for six months and u/s 5 of the Imports and Exports (Control) Act 1947 read with Clause 5 of the Imports (Control) Order, 1955 to undergo rigorous imprisonment for six months and to pay a fine of Rs. 2000 and in default to undergo rigorous imprisonment for three months, the sentences to run concurrently.

2. Accused 2, 3 and 5 have been sentenced to pay each a fine of Rs. 1000 u/s 120-B I.P.C. and Section 5 of the Imports and Exports (Control) Act 1947 read with Clause 5 of the Imports (Control) Order 1955 under each of the two counts and in default to undergo rigorous imprisonment for three months under each count. The fourth accused has been sentenced to pay a fine of Rs. 2000 u/s 120-B I.P.C. and a further sentence of fine of Rs. 2000 u/s 5 of the Imports and Exports (Control) Act 1947 read with Clause 5 of the Imports (Control) Order 1955. The revision petition has been filed by the State for the

enhancement of the sentence.

3. It is sufficient to state the facts briefly which will be relevant for deciding the issues raised in these appeals, as the scope of controversy is very much limited before me. The fourth accused Messrs. Dina Seithi Ltd., is a public limited company of which the first accused was the Director in charge of the administration and management. The second accused, the brother of the first accused, is one of the Directors of M/s. Dina Seithi Ltd. The third accused was the Manager of Messrs. Mohan Ram Press, the printers for the fourth accused. The wife of the first accused, Smt. Gomathi Devi was the sole proprietrix of Messrs. Mohan Ram Press. The fifth accused was a broker engaged in the negotiations for purchases and sales of printing machines.

4. The first accused as Director in charge of Dina Seithi Ltd., applied for the issue of an import licence on behalf of the fourth accused on 5.5.1960 for the import of a printing machine valued at rupees three lakhs under the category of "actual users" on the ground that the printing machine was required for the development of newspaper industry. On the recommendation by the Committee consisting of the Secretary, Ministry of Commerce and Industry, Registrar of Presses and Controller of Imports and Exports, a licence was granted on 21.9.1960 (Ex. P. 12) in the name of the fourth accused for importing one rotary press to the value of Rs. 1,500,000. On a further request made by the first accused on behalf of the fourth accused, to enhance the value to Rs. three lakhs the enhancement was approved by the Chief Controller and the period of the validity of the licence was also extended by six months. On 2.7.1961 the first accused made the application requesting for permission to import two rotary machines of the value of Rs. three lakhs under the import licence granted to him (Ex. P. 12) on the ground that one more press was required for his office at Madurai. The Chief Controller permitted the accused to import two printing machines.

5. The first accused arranged with Messrs. Universal Printing Equipment Co., New York, U.S.A. for importing a second hand rotary press. It arrived on 17.2.1962 at the Madras Harbour which was taken delivery of by the fifth accused under instructions from the first accused. In the meanwhile, there were negotiations for the sale of the machinery through the fifth accused, the broker, and ultimately the printing machine imported by the first accused was sold to P.W. 16, George Thomas of Kottayam, for a sum of Rs. 2,16,700. It is not necessary to note the details of the correspondence and negotiations resulting in the sale of machinery to P.W. 16 as the sale is not disputed before me. The appellants were prosecuted for the contravention of the condition of the licence, Ex. P. 12, granted to the fourth accused and also for having conspired to commit an illegal act namely contravening the condition of the licence Ex. P. 12 by selling the printing machinery to P.W. 16.

6. Several contentions were raised before the learned Chief Presidency Magistrate on behalf of the accused and though the same contentions were reiterated in the memorandum of grounds filed in these appeals, the learned Counsel appearing for the

appellants, Sri. V. K. Thiruvengkatachari, confined himself mainly to the fact that condition (c) of the licence issued to accused 4 (Ex. P. 12) was only with reference to raw materials or accessories and that as such the sale of the printing press, even if true, cannot be said to be in contravention of the said condition (c). The factum of sale of the printing press, to P.W. 16, is not disputed. For appreciating the contention of the learned Counsel for the appellants relating to the purport and effect of the contravention of condition (c) of the licence, Ex. P. 12, it is necessary to note briefly the ingredients of the offence u/s 5 of the Imports and Exports (Control) Act 1947 and also the procedure relating to the grant of licence. Under the scheme of the Imports and Exports (Control) Act 1947 (hereinafter called the Act), power is conferred on the Central Govt. by virtue of Section 3, to make provisions for prohibiting, restricting or otherwise controlling the import and export of goods of any specified description. Section 5 of the said Act prescribes penalty for contravention of an order made by the Central Government u/s 3 thereof. Section 5, as amended by Act IV of 1960, is in the following terms:

If any person contravenes or attempts to contravene, or abets a contravention of any order made or deemed to have been made under this Act or any condition of a licence granted under any such order, he shall, without prejudice to any confiscation or penalty to which he may be liable under the provisions of the Sea Customs Act 1870, as applied by Sub-section (2) of Section 3, be punishable with imprisonment for a term which may extend to one year, or with fine, or with both.

In exercise of the powers conferred on the Central Government, by virtue of Section 3 of the Act, the Central Government issued an order called the Imports (Control) Order 1955 (hereinafter called the Order), by a notification dated 7.12.1955, which repealed the earlier Orders and the relevant provisions of Rule 5 of the said Order are as follows:

Rule 5. Conditions of licence:

(1) The licensing authority issuing a licence under this Order may issue the same subject to one or more of the conditions stated below:

(i) that the goods covered by the licence shall not be disposed of, except in the manner prescribed by the licensing authority, or otherwise dealt with without the written permission of the licensing authority or any person duly authorised by it; (ii) that the goods covered by the licence on importation shall not be sold or distributed at a price exceeding that which may be specified in any directions attached to the licence, (iii) that the applicant for a licence shall execute a bond for complying with the terms subject to which a licence may be granted;

(2) ...

(3) It shall be deemed to be a condition of every such licence, that: (i) no person shall transfer and no person shall acquire by transfer any licence issued by the licensing authority except under and in accordance with the written permission of the authority

which granted the licence or of any other person empowered in this behalf by such authority, (ii)... (iii)...

4. The licensee shall comply with all conditions imposed or deemed to be imposed under this clause".

In the present case, by virtue of Sub-clause (1) of Clause 5 of the Order, the licensing authority issued the licence Ex. P. 12 attaching conditions to it, one of the conditions being condition (c). There is no doubt that by virtue of Sub-clause (4) of Clause 5 of the order, all the conditions imposed by the licensing authority must be complied with by the licensee. Contravention of any of the conditions imposed by the licence will be a contravention of the Order, which is punishable u/s 5 of the Act. These provisions have statutory force.

7. Before dealing with the contentions raised by the learned Counsel for the appellants, it is also necessary to note briefly the procedure followed by the licensing authority in granting the licence. For this purpose, the Central Government issued certain administrative instructions to be followed by the licensing authority, for their guidance. These instructions are contained in what is called a "red book", dealing with the Import Trade Control policy of the Government of India. These instructions relate to grant of import licences to three categories of persons, namely (1) Established Importers (2) Actual users and (3) newcomers. In the present appeals we are concerned with "actual users". The term "actual users" is defined in the Red Book relating to April-September 1960, as those who require raw materials or accessories for use in an industrial manufacturing process. In the same book, the items licensable to actual users have been indicated in the proper column in Section II and a consolidated list of these items is given in Appendix IV. It appears that besides actual users, who require raw materials and accessories, as defined in the Red Book, persons, who require certain commodities indicated in that Book, can also apply in the form prescribed for applications by actual users; vide appendix VI. A licence for the import of printing machinery for newspaper establishments and quality printers for the purpose of replacement or development purposes can be applied under the Actual user's application form as indicated in item 67(1)(i) of Section 11 of the said Red Book. The first appellant on behalf of the fourth appellant applied for a licence for import of printing machinery for the purpose of development of newspaper industry and that application was made in the form prescribed for actual users, and the licence was also granted for the said import in the form intended for actual users. The said licence is in printed form. The relevant condition attached to the licence, which is alleged to have been contravened in this case, is in the following terms:

(c) The goods will be utilised only for consumption as raw materials or accessories in the licence-holders' factory and that no portion thereof will be sold to or be permitted to be utilised by any other party or pledged with any financier other than Banks authorised to deal in foreign exchange provided that particulars of goods so pledged are reported in advance to the licensing authority.

It is contended for the appellants that the printing press imported in this case, is neither raw materials nor accessory, as mentioned in condition (c) and that this condition refers to actual users, as defined in the Red Book relating to April-September 1960, namely, persons who require raw materials or accessories for use in an industrial manufacturing process. Hence, this condition cannot apply to printing machinery. Though this contention seems to be somewhat technical at the outset, it has its force with reference to the nature of the offence, namely, contravention of the conditions imposed by the licence.

Contravention of the conditions of the licence is the crux of the offence. It has therefore to be carefully examined whether condition (c) mentioned in Ex. P. 12 will relate to printing machinery also. A reading of the terms of the said condition makes it clear that the goods to which they refer are raw materials or accessories. The said condition begins: "the goods will be utilised for consumption as raw materials or accessories in the licence holders' factory", thereby meaning that the raw materials or accessories imported or covered by the licence Ex. P. 12 must be utilised for consumption as such in the licence holders' factory, emphasis being laid more on the place and the manner in which the raw materials or accessories are to be used. The second clause of that condition is that such goods, namely, raw materials or accessories, or portion thereof, shall not be sold etc. etc. This, in my view, undoubtedly refers to raw materials or accessories, consistent with the definition of actual users, who require raw materials or accessories.

8. On behalf of the prosecution it was contended that the goods referred to in condition (c) of Ex. P. 12 should be taken as goods covered by Ex. P. 12, namely, printing machinery and that it must be read disjunctively, relating to the second clause of condition (c). But I am of opinion that there is no reason to read the second clause of condition (c) disjunctively from the first clause thereof. If the contention put forward by the prosecution is accepted, the first clause of the condition will have no meaning, as it has to be read, according to the prosecution, as meaning that the goods (printing machinery) will be utilised only for consumption as raw materials or accessories in the licence-holders' factory. If read in this manner, printing machinery must be deemed to be raw materials or accessories, by fiction. I do not think that that was the intention of the licensing authority in imposing this condition. It is not proper to read into the condition something which is not meant by it.

9. The next point to be considered is, whether printing machinery can be classified as raw materials or accessories, to bring it under condition (c). The learned Chief Presidency Magistrate held that the printing press was an accessory for the publication of the newspaper and that condition (c) applied to the printing press covered by the licence Ex. P. 12. In my opinion, printing press cannot be classified as an "accessory" for the publication of the newspaper. In Webster's New World Dictionary "accessory" has been defined as equipment usually removeable, replaceable for convenience, safety or completeness, as accessories of an automobile. In *Armstrong Mitchell and Co. v. Hotchkiss Ordnance Co.* (1897) 13 TLR 188 it was held that parts of the gun were not accessories to the gun. In the Red Book relating to April-September 1960 in several

places the terms "accessories" and "parts" are used in contradistinction with machinery:

Page in the

Red Book	Part	Item No.
117	II	39(b)
118	II	39(c)
144	III	5(k)
222	IV	295, 297, 299 & 301
232	IV	313
286	V	70, 299
301	V	78
306	V	82
307	V	86

Even in item 67(1)(i) of Section II of the said Red Book, printing machinery is not described as raw material or accessory, but indication is given therein that Actual user's licence can be obtained if the machinery is required for replacement or development purposes. The learned Public Prosecutor is unable to support the finding of the learned Chief Presidency Magistrate that printing machinery is an "accessory". However, he faintly suggested that it will be "raw material" in relation to the newspaper industry. Raw material, as commonly understood, is used in the process of manufacture. Printing machinery will certainly not come under the category of "raw material." When it is not established that printing machinery is "raw material" or "accessory", condition (c) of Ex. P. 12 will not apply to it. To sustain a conviction for the offence, namely, contravention of the conditions of the licence, the condition must be clear, specific and unambiguous. If there is a reasonable doubt relating to the nature of the condition imposed, the benefit of that doubt will have to be given to the accused.

10. In this context it is very significant to note that in 1964 machinery and spare parts were added to the definition of "actual users" by an amendment and consistently therewith the wording of the conditions also was changed in the licences issued thereafter. Condition (c) in the new licence issued, which has been produced before me by the learned Counsel for the appellants, is as follows:

All items of goods imported under it shall be used only in the licence-holders' factory and no portion thereof will be sold to or be permitted to be utilised by any other party.

Apparently, experiencing difficulty in classifying "machinery" and "spare parts" under the category of raw materials or accessories, the amendment appears to have been brought about in 1964. This amendment and change in the conditions of the licence, as mentioned above, add strength to the contention of the learned Counsel for the appellants.

11. The learned Public Prosecutor relied upon the decisions of the [Abdul Aziz Aminudin Vs. State of Maharashtra](#), and [State of West Bengal Vs. Motilal Kanoria](#), . In the first case a permit was obtained for the import of certain quantity of art silk yarn and a condition similar to condition (c) in Ex. P. 12, that the goods would be utilised only for consumption as raw material or accessories in the licence holders' factory and that no portion thereof would be sold to anybody, was imposed. The Supreme Court held that a sale of a portion of that yarn was in violation of the said condition. This decision is not of any help to the prosecution, because what was imported, namely, art silk yarn, was a raw material, and the condition of the licence therein referred to raw material. The sale of the art silk yarn was clearly a violation of the condition of the licence. In the second case, it is no doubt true that what was imported was machinery under the actual user's licence. Item 7 of the licence issued stated that the applicant will use the machinery for his own use. No condition similar to condition (c) in Ex. P. 12 was imposed in that case, obviously because machinery could not be treated as raw material or accessory. In Ex. P. 12 there is no condition similar to the one mentioned in item 7 of the licence in that case. Their Lordships have held that there was a contravention of Clause 5 of the Order, 1955, on the ground that the licence created its own condition that the goods (machinery) should be used by the licensee, thereby meaning the machinery. They further observed that when the goods were sold, condition in column (item) No. 7, was broken and that would be a breach of the Order 1955, which has come into force. This decision also is not of help to the prosecution.

12. I have already held that condition (c) in Ex. P. 12 which is alleged to have been contravened by the appellants, cannot be made applicable to printing press, but it is a general condition printed in the licence form consistent with the definition of "Actual users" before the amendment of that term in 1964. The licensing authority in this case has not applied its mind, when granting the licence for importing printing machinery by the first accused, in imposing condition (c) in Ex. P. 12. The lacuna was probably discovered subsequently, as seen from the licence issued later, where the condition is properly worded.

13. I therefore hold, for the reasons mentioned above, that the prosecution has not proved the offence against the appellants beyond reasonable doubt.

14. On the view I am taking that no offence has been made about against the accused, it is not necessary for me to consider the charge relating to conspiracy.

15. In the result, the appeals are allowed and the appellants are acquitted. The bail bond of the accused 1 will stand cancelled, The fine amounts, if paid, will be refunded. Cri.R.C. 364 of 1965 filed by the State for enhancement of sentence is dismissed.