

Shambhavi
N. Shivgan

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IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

Criminal Appeal No. 579 / 1998

Nilesh Bhaskar Rathod

Aged 34 years, Occu. Business,

Residing at Lucky Palace, 204,

Bazar Peth, Navghar (East)

Tal. Vasai, Dist. Thane.

.. Appellant

Versus

The State of Maharashtra

(At the instance of Manikpur

Police Station)

.. Respondent

Mr. K.H. Parekh, Advocate for Appellant.

Mr. S.R. Agarkar, APP for State/ Respondent.

CORAM : SANDEEP K. SHINDE J.

DATE : 10th MARCH, 2021.

ORAL JUDGMENT :-

1. Appellant has been convicted for breach of condition no. 2(a) and 2(b) of the license issued under the Maharashtra Scheduled Oil Seeds and Oils (Dealers and Millers) Licensing Order, 1973 and sentence to suffer simple imprisonment for three months and to pay fine of Rs. 2000/- with default stipulation. It is against the conviction and sentence passed by the learned Special Judge (E.C. Act), Thane in Special Criminal Case (E.C. Act) No. 15 / 1996, this appeal is preferred.

2. Briefly stated prosecution case is that;

The appellant is a dealer within the meaning of Clause 2 (b) of

the Maharashtra Scheduled Oil Seeds and Oils (Dealers and Millers) Licensing Order 1973. License no. BSN - 27 at Exhibit -7 issued to him shows it was issued in terms of provisions of the Maharashtra Scheduled Oil Seeds and Oils (Dealers and Millers) Licensing Order 1973 (Order of 1973, for short). Indisputably, order of 1973 was repealed by the, Food and Civil Supply Department vide notification dated 14th September, 1977 vide Maharashtra Scheduled Oil Seeds and Oils (Dealers and Millers) (Repealed) Licensing Order 1977 (Repealed order, for short). On the very day, i.e. 14th September, 1977 order, Maharashtra Scheduled Oil Seeds and Oils (Dealers and Millers) Licensing Order 1977 came into force.

3. Indisputably, under the 1977 order, the license conditions were modified whereby dealers were permitted to store the oil seeds/ oils at a place other than mentioned in the license, subject to condition that, dealer shall intimate Licensing Authority within 24 hours of the storage, at such other place.

4. In the case at hand, on 2nd February, 1996, Supply Inspector, found 242 tins of edible oil were stored at a place, 5 kms. away from the licensed premises. As such, appellant was prosecuted and charged for breach of license condition under the Licensing Order of 1973 read with Section 3 of the Essential Commodities Act.

5. The learned Special Court upon appreciating the evidence of five witnesses recorded the conviction as stated above.

6. The main contention of the appellant is that the impugned conviction and sentence recorded by the Special Judge is opposed to law for the reason, that the charge was framed for an offence under the Non-existing Law called Maharashtra Scheduled Oil Seeds and Oils (Dealers and Millers) Licensing Order 1973. Submission is as on the date of offence i.e. 2nd February, 1996, trading in Oil Seeds and Oil was governed and regulated by order of 1977 and not order of 1973. Thus submitted since prosecution was launched on Non-existing law i.e. repealed order, it renders the prosecution void. It is submitted 'defect' in prosecution being fundamental, it is not curable either under Section 464, 465 of the Code of Criminal Procedure, 1973.

. On these grounds, learned Counsel seeks to quash the impugned conviction and sentence.

7. Per-contra, learned APP supports the impugned conviction.

It is not in dispute that on 2nd February, 1996. Order of 1977 was inforce, however, the appellant was charged for breach of Licensing order 1973.

8. I have carefully considered the submissions of respective counsel and also perused the Licensing Orders of 1973, 1977 repealed order and the relevant license conditions.

9. Indisputably, under Licensing Order of 1977, a dealer was permitted to store the goods at a place other than the licensed premises but was obliged to post intimation to Authorities within 24 hours of such storage at such other place.

Indeed this condition was not annexed to Licensing Order of 1973. Though the appellant has adduced the evidence and probablized his defense that 242 tins of edible oil were stored at a place other than licensed premises, under unseen circumstances, defense was not accepted, since he was prosecuted under 1973 order, wherein dealer was not at all permitted to store commodity i.e. edible oil in a place other than licensed premises. Conversely, had he been prosecuted under order of 1977 license conditions would allow him to adduce evidence in defense. Thus to conclude the prosecution founded on non-existing law, was void. A defect in non-existing prosecution being fundamental is not curable. As a result, appeal is allowed.

10. The impugned conviction and sentence quashed and set aside. Fine amount, if any paid, be refunded to the appellant. Bail bond is cancelled and sureties are discharged.

11. Appeal is allowed and disposed of.

(SANDEEP K. SHINDE, J)