

PETITIONER:
SHEORATAN AGARWAL & ANOTHER

Vs.

RESPONDENT:
STATE OF MADHYA PRADESH

DATE OF JUDGMENT 12/09/1984

BENCH:
REDDY, O. CHINNAPPA (J)
BENCH:
REDDY, O. CHINNAPPA (J)
MADON, D.P.

CITATION:
1984 AIR 1824 1985 SCR (1) 719
1984 SCC (4) 352 1984 SCALE (2) 362

ACT:
Essential Commodities Act, 1955-Section 10-
Interpretation of-Company contravening an order made under
s.3-Whether the person in-charge or an officer of the
company at the relevant period can be prosecuted separately
without prosecuting the company.

HEADNOTE:

The two appellants, who were the Managing Director and the Production-Manager of a public limited company, were prosecuted by the respondent for alleged violations by their company of clauses 2 (c) (i) and 3 of the Madhya Pradesh Pulses, Edible Oil Seeds and Edible Oil Dealers Licensing Order, 1977 and clause 3 of the Madhya Pradesh Essential Commodities (Price Exhibition and Price Control) Order, 1977 read with sections 3 and 7 of the Essential Commodities Act (the Act, for short). The appellants moved the High Court under sections 397 and 482 of the Code of Criminal Procedure to quash the proceedings against them on the ground that they could not, in law, be prosecuted unless the company itself was prosecuted. The High Court over-ruled this contention and hence these appeals by special leave.

Dismissing the appeals,

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HELD: 1. Section 10 of the Act lists the persons who may be held guilty and punished when it is a company that contravenes an order made under Section 3 of the Act. They are: (1) the company itself (2) every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, that is, the person-in-charge of the company, and (3) any director, manager, secretary or other officers of the company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, that is, an officer of the company. [722C-F]

2. It is clear from the language of Section 10 that there is no statutory compulsion that the person-in-charge or an officer of the company may not be prosecuted unless he be ranged alongside the company itself. Each or any of them may be separately prosecuted or along with the company if there is a contravention of an order made under Section 3 of

the Act by the company. It does not lay down any condition that the person-in-charge or an officer of

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the company may not be separately prosecuted if the company itself is not prosecuted. Therefore the prosecutions of the appellants are maintainable and that there is nothing in Section 10 of the Act which bars such prosecution

[722 G,H, 723F]

State of Madras v. C.V. Parekh and another, AIR 1971 S.C. 447, State of Gujarat v. Chandulal Jethalal, (1980) 21 Gujarat Law Reporter 353, Mirji Brothers Oil Mill v. State of Karnataka, 1980 (2) Karnataka Law Journal 35 and Santi Kumar Agarwala v. State, ILR. 1975 Cuttack 86, distinguished.

Durgamata Oil Mill v. Calcutta Municipality, 1978 CrL. L.J. 222, D.K. Jain v. State, AIR 1965 All. 525 and Chander Bhan v. The State, 1975 All India Prevention of Food Adulteration, held inapplicable.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal Nos. 452-453 of 1984.

Appeals by Special leave from the Judgment and Order dated the 1st July, 1983 of the Madhya Pradesh High Court in Criminal Revision No. 105 of 1983 and Misc. CrL. Case No. 366 of 1983.

S.T. Desai, M.S. Ganesh and S.C. Dagadiya, for the appellants.

Ravindra Bana and A.K. Sanghi for the respondents.

The Judgement of the Court was delivered by CHINNAPPA REDDY, J. Special Leave granted.

A complaint was laid by the State of Madhya Pradesh through the Inspector, Food and Civil Supplies, Dewas against the two petitioners Sheoratan Agarwal and Raghunandanlal Chaturvedi, the Managing Director and the Production Manager of M/s 5-S Limited, a public limited company with its registered office at Calcutta, for alleged violations of clause 2 (c)(i) and 3 of the Madhya Pradesh Pulses, Edible Oil Seeds and Edible Oil Dealers Licensing Order, 1977 and clause 3 of the Madhya Pradesh Essential Commodities (Price Exhibition and Price Control) Order, 1977 read with sections 3 and 7 of the Essential Commodities Act. The petitioners moved the High Court of Madhya Pradesh under sections 397 and 482 of the Code of Criminal Procedure to quash the proceedings against them on the ground that they could not, in law, be prosecuted unless the company itself was prosecuted. The High Court overruled the contention raised on behalf of the petitioners. Hence these two appeals by Special Leave under Article 136 of the Constitution.

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Shri S.T. Desai, learned counsel for the petitioners, urged the same contention before us, relying for that purpose upon the language of s. 10 of the Essential Commodities Act, and the decision of this Court in State of Madras v. C. V. Parekh and another and the decision of some High Courts: State of Gujarat v. Chandulal Jethalal, Mirji Brothers Oil Mill v. State of Karnataka, Santi Kumar Agarwala v. State.

We do not think that the language of s. 10 of the Essential Commodities Act justifies the submission made on behalf of the petitioners that if it is alleged that the person contravening the order made under the Essential Commodities Act is a company, the prosecution of the

Directors, the officers, and servants of the Company or other persons is precluded unless the Company itself is prosecuted. We are afraid the submission made on behalf of the petitioners proceeds upon a misunderstanding of the decision of this Court in *State of Madras v. C.V. Parekh*. (supra). So do the various other decisions of High Courts cited before us.

Section 10 of the Essential Commodities Act is as follows:

"(1) If the person contravening an order made under Sec. 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to, the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this subsection shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in subsection (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable

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to any neglect on the part of, any director, manager, secretary or other officer of the company such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation-For the purpose of this section,-

- (a) "company" means any body corporate, and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm."

The Section appears to our mind to be plain enough. If the contravention of the order made under Section 3 is by a Company, the persons who may be held guilty and punished are (1) the Company itself (2) every person who, at the time the contravention was committed, was in charge of, and was responsible to, the Company for the conduct of the business of the Company whom for short we shall describe as the person-in-charge of the Company, and (3) any director, manager, secretary or other officer of the Company with whose consent or connivance or because of neglect attributable to whom the offence has been committed, whom for short we shall describe as an officer of the Company. Any one or more or all of them may be prosecuted and punished. The Company alone may be prosecuted. The person-in-charge only may be prosecuted. The conniving officer may individually be prosecuted. One, some or all may be prosecuted. There is no statutory compulsion that the person-in-charge or an officer of the Company may not be prosecuted unless he be ranged alongside the Company itself. Section 10 indicates the persons who may be prosecuted where the contravention is made by the Company. It does not lay down any condition that the person-in-charge or an officer of the Company may not be separately prosecuted if the Company itself is not prosecuted. Each or any of them may be separately prosecuted or alongwith the Company. Section 10 lists the person who may be held guilty and punished when it is a Company that contravenes an order made under Section 3 of the Essential Commodities Act. Naturally, before the

person in-charge or an officer of the Company is held guilty in that capacity it must be established that there has been a contravention of the order by the Company. That should be axiomatic and that is all that the Court laid down in State of Madras v. C. V. Parekh (supra) as a careful reading of that case will show and

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not that the person-in-charge or an officer of the Company must be arraigned simultaneously along with the Company if he is to be found guilty and punished. The following observations made by the Court clearly bring out the view of the Court:-

"It was urged that the two respondents were in charge of, and were responsible to, the company for the conduct of the business of the Company and, consequently, they must be held responsible for the sale and for thus contravening the provisions of clause 5 of the Iron and Steel (Control) order. This argument cannot be accepted, because it ignores the first condition for the applicability of S. 10 to the effect that the person contravening the order must be a company itself. In the present case, there is no finding either by the Magistrate OR by the High Court that the sale in contravention of clause 5 of the Iron & Steel (Control) order was made by the Company. In fact, the Company was not charged with the offence at all. The liability of the persons in charge of the Company only arises when the contravention is by the Company itself. Since, in this case, there is no evidence and no finding that the Company contravened Cl. 5 of the Iron & Steel (Control), order the two respondents could not be held responsible. The actual contravention was by Kamdar and Villabhadras Thacker and any contravention by them would not fasten responsibility on the respondents."

The sentences underscored by us clearly show that what sought to be emphasised was that there should be a finding that the contravention was by the Company before the accused could be convicted and not that the Company itself should have been prosecuted along with the accused. We are therefore clearly of the view that the prosecutions are maintainable and that there is nothing in section 10 of the Essential Commodities Act which bars such prosecutions.

The learned counsel also invited our attention to the decisions in Durgamata Oil Mill v. Calcutta Municipality, D.K. Jain v. State and Chander Bhan v. The State. None of these cases has any application. They arose under the Prevention of Food Adulteration Act and it is unnecessary for us to consider them. The appeals are rejected.

M.L.A. Appeals dismissed.

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