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S. CHINNASAMY AND ANR.

v.

SEED INSPECTOR, COIMBATORE AND ANR.

SEPTEMBER 29, 2006

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[S.B. SINHA AND DALVEER BHANDARI, JJ.]

C

Essential Commodities Act, 1955—Section 3(2)(a), (h), (i) & 7(1)(a)(ii)—Seeds (Control) Order, 1983—Clauses 3(1), 8(a)& (b) & 18(1)—Conviction by Courts below for violation of Seeds Control Order—Imposition of sentence for three months—Accused already undergone imprisonment for one month—They pleaded for reduction of sentence to period already undergone—Plea upheld in view of concession made by State in the peculiar facts viz. accused 2 was a young boy aged 17 years at the time of commission of offence; quantity of seeds seized was small and the case registered was the first of its kind in the State.

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Appellants were allegedly carrying out business in seeds without valid licence. The Special Judge (E.C./N.D.P.S. Act) convicted them for violation of clauses 3(1), 8(a) and (b) and 18(1) of the Seeds (Control) Order, 1983 with reference to clauses (a), (h) and (i) of sub-section 2 of Section 3 punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 and sentenced them to undergo three months simple imprisonment. High Court upheld the judgment of the Special Judge.

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In appeals to this Court, the Appellants submitted that the sentence imposed by the Courts below was disproportionate, excessive and harsh. They submitted that including the period of remission, they had already undergone imprisonment of about one month and that the ends of justice would be met if their sentence was reduced to the period already undergone. In response, the State made concession considering the peculiar facts of the case, viz. that Appellant No. 2 was a young boy aged 17 years at the time of commission of offence; that the quantity of seeds seized was small and that it was the first case recorded in the State of Tamil Nadu for violation under the Seeds (Control) Order.

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Partly allowing the appeals, the Court

HELD: 1. In view of submission of State, it is not deemed appropriate to adjudicate and give findings on the various issues raised by the counsel for the parties. [925-D] A

2. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the State, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during the pendency of these appeals and they are now not required to surrender. [925-E, F] B

CRIMINAL APPELLATE JURISDICTION : Criminal Appeal Nos. 1521-1522 of 2005. C

From the Judgment & Order dated 3.12.2004 of the High Court of Judicature at Madras in Crl. A.No. 719/1997.

P. Anand Padmanabhan and Pramod Dayal for the Appellant. D

V.G. Pragasam for the Respondents.

The Judgment of the Court was delivered by

DALVEER BHANDARI, J. These criminal appeals emanate from the judgment of the High Court of Judicature of Madras dated 3.12.2004 by which the learned Single Judge of the High Court has upheld the judgment of the Special Judge (E.C./N.D.P.S. Act), Coimbatore dated 9.9.1997 for violation of clauses 3(1), 8(a) and (b) and 18(1) of Seeds (Control) Order, 1983 with reference to clauses (a), (h) and (i) of sub-section 2 of the Section 3 punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. The Special Judge sentenced the appellants/accused to undergo three months simple imprisonment and to pay a fine of Rs.1000/- each on three counts. E F

Brief facts which are imperative to dispose of these appeals are recapitulated as under:- G

The Seed Inspector, Coimbatore, PW1, went for inspection of the shop of appellant no. 1 on 15.5.1996. According to him, the shop was open but there was no responsible person available in the shop, therefore, the Seed Inspector could not conduct the inspection on that day though he waited there for about an hour. H

- A** The Seed Inspector, on 25.10.1996 again had gone to the shop of appellant no. 1, S. Chinnasamy, but appellant no. 1 was not there and appellant no. 2, R. Soundarajan, his agent, was running the business of the shop at that time. According to the statement of PW 1, the appellants were transacting business in pesticides, fertilizers and seeds. The Seed Inspector on inspection found 2¼ kgs. of cotton seeds and 2 kgs. of tomato seeds in the shop.
- B** Appellant no. 1 had not obtained any licence for selling the seeds. According to the Seed Inspector P.W.1, neither the price list nor the index was displayed in the shop. Particulars of the seed varieties were also not displayed. No books, accounts or records were maintained. The above quantity of seeds found in the shop was packed and sealed in the presence of appellant no. 2,
- C** R. Soundarajan and the same was entrusted to him with the instructions to the proprietor to give his explanation on or before 30.10.1996. The Inspection Report was prepared and on the same appellant no. 2, R. Soundarajan had appended his signature. The Bill Book - Exb.6 was also seized. The Bill book revealed that appellant no.1 had transacted business in seeds without any valid permit. The Seed Inspector prepared the complaint on the instructions
- D** of his superior officer, PW2, Thiru Isac Jesudas.

The relevant part of the complaint reads as under:-

- E** "The complainant is a notified Seed Inspector, appointed under Section 12 and empowered to act as per section 13 of the Seeds (Control) Order, 1983. His jurisdiction extends over the entire Revenue Taluks of Coimbatore North and Coimbatore South. He is a Public Servant by virtue of Notification No. S. O. 763 (e) DT. 27.9.87 issued by the Govt. of India and is empowered to institute prosecution.

- F** The accused (1) is a dealer of seeds doing seed business at the address mentioned above, which comes under the jurisdiction of this Court. The accused (2) is an authorized sales person of the accused (1).

- G** The Seed Inspector, Coimbatore on receipt of reliable information visited the premises of the accused on 25.10.1996. At that time, the accused (2) was present on the spot. He was looking after the business at the time of visit.

During the course of inspection, the following offences were noticed.

- H** (1) Seed business had been carried out without obtaining a valid

license. A

(2) Stock / price list not maintained.

(3) Records not maintained.

The above defects have not been rectified even after repeated instructions and reminders since 15.5.96. The explanations offered by the accused are not satisfactory. B

The above acts of the accused contravene section 3; section (8) (a), section (9) and Section 18(1) of the Seeds (Control) Order, 1983. Hence the accused is punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. C

Hence, it is prayed that this Honorable Court must be pleased to take up this case on file, summon them and render justice.

Sd/-

Seed Inspector D
Coimbatore"

According to the prosecution, the incriminating circumstances appearing in the evidence against the appellants were unfolded to them in the form of a questionnaire for the purpose of enabling them to personally explain the same. Appellant no.1 had stated that he was dealing only in cement and not in seeds. He further stated that the officials took him to the office, threatened him and obtained his signature. Appellant no. 2, on his part, stated that he had nothing to do with the shop in question and did not work in the shop of appellant no.1. The point for determination framed by the trial court was whether the prosecution had proved beyond all reasonable doubt the charges framed against the accused. E F

To substantiate the charges against the appellants, in the trial Court, PW 1, Thiru John Thadeus who was working as the Seed Inspector and P.W. 2 Thiru Isac Jesudas who was working as the Seed Inspection Assistant Director were examined. Exhibits P-1 to P-6 were produced. The appellants were questioned under Section 313 of the Code of Criminal Procedure. G

The Seed Inspector, PW 1, in his statement had clearly stated that "I prohibited the sale of the seeds in the shop and put them in a bag and sealed them and handed over to the person (means appellant no. 2) in the shop and obtained his signature. Thereafter, I prepared an inspection memo Exhibit P- H

- A 1". According to him, the Seed Inspection Assistant Director, PW2 gave him permission to file the case against the accused.

The relevant portion of the statement given by PW 1 in his cross-examination regarding the fact that the agricultural land belonged to appellant no. 1 and his father-in-law, reads as under:

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"I cannot deny that he has properties at Thadagam and Kothagiri which are the properties of his father in law. It is common that the land owners used to buy the seeds and keep it for their own use."

- C It may be pertinent to mention that the sale of seeds to the public has not been proved by examining any of the purchasers.

- D The trial court (The Presiding Officer, Essential Commodities & NDPS Act Cases, Coimbatore) arrived at a definite finding that evidence on record established that Seed Inspector PW 1 had visited the shop of appellant no. 1 and found that the seeds were being sold by appellant no. 2 as an agent of appellant no. 1 without any valid license. According to the trial court, on the basis of evidence and documents on record, it could be concluded that the appellants had violated Clauses 3(1), 8(a) and (b) and 18(1) of the Seeds (Control) Order, 1983 issued under Section 3 of the Essential Commodities Act punishable under Section 7(1)(a)(ii) of the said Act.

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Clauses 3(1), 8(a) & (b) and 18(1) of the Seeds (Control) Order, 1983 read as under:

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"3. *Dealer to obtain licence.*- (1) No person shall carry on the business of selling, exporting or importing seeds at any place except under and in accordance with the terms and conditions of licence granted to him under this order."

8. *Dealers to display stock and price list.*- Every dealer of seeds shall display in his place of business

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(a) the opening and closing stocks, on daily basis, of different seeds held by him;

(b) a list indicating prices or rates of different seeds."

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"18. *Maintenance of records and submission of returns, etc.* (1) Every dealer shall maintain such books, accounts and records relating to his business as may be directed by the State Government."

The Special Court found the appellants guilty of the aforesaid clauses of the Seeds (Control) Order, 1983 and convicted them thereunder and sentenced each of the appellants to undergo three months simple imprisonment on three counts and to pay a fine of Rs.1,000/- each on three counts, in default to undergo one month of simple imprisonment on each count. The court also directed that the sentence on each accused except the default sentence shall run concurrently.

The appellants, aggrieved by the said order of the Special Judge for Essential Commodities / NDPS Act, preferred a criminal appeal under Section 374 of the Code of Criminal Procedure to set aside the conviction and sentence.

It has been submitted on behalf of appellant no. 1 that he was transacting business only in cement and not in seeds and the seeds of cotton and tomato which were kept in his shop were meant for personal use and not for sale to the public. This defence of appellant no. 1 has been discarded by the courts below because appellant no. 1 had failed to produce any document showing the survey number or the extent of land owned by him or his father in law. According to the impugned judgment, the defence of appellant no. 1 is further falsified by Exb. P-6, Bill Book, which revealed the sale of seeds to various customers for a long time.

The appellants submitted that this was perhaps the first case in the State of Tamil Nadu in which conviction under the Seeds (Control) Order, 1983 had been recorded, therefore, some leniency and indulgence should be shown to them, particularly when a very small quantity of the seeds meant for personal use was recovered from the shop of appellant no. 1.

According to the High Court, acceptance of this contention would set a wrong precedent. The High Court observed that with the definite purpose of bringing out quality production, the Seeds (Control) Order, 1983 was brought into force. Reporting of violation cannot be viewed lightly, lest it would have serious repercussions on the quality of the yield, affecting the public at large. It is also mentioned in the impugned judgment that the huge quantity of seeds had repeatedly been sold to the public for more than 1½ years without license. According to the conclusion arrived at in the impugned judgment of the High Court, the reasoning and findings of the Special Judge were in conformity with the evidence and material on record.

The High Court, after consideration of the entire evidence and documents on record, affirmed the findings of the trial court. The appellants, aggrieved

A by the impugned judgment of the High Court, have preferred these appeals before this Court. The appellants have highlighted serious procedural lapses in conducting the entire case. According to the appellants, the respondents in their anxiety to convict the appellants, (because this was the first case registered in the State of Tamil Nadu for violation under the Seeds (Control) Order), had given a total go-bye to the established procedure. The appellants also pointed out that, admittedly, Seed Inspector, PW1, clearly stated in his statement that he had taken the seeds from the shop of appellant no. 1, put them in a bag and sealed them and handed over the sealed bag to appellant no. 2. The procedure which was followed by the Seed Inspector is quite contrary to sub-clause (3) of Clause 13. Clause 13(3) reads as under:

C “13(3) Where any seed is seized by an Inspector under this clause, he shall forthwith report the fact of such seizure to a Magistrate whereupon the provisions of Sections 457 and 458 of the Code of Criminal Procedure, 1973 (2 of 1974) shall, so far as may be, apply to the custody and disposal of such seed.”

D According to sub-clause (3) of Clause 13, after seizure, the Seed Inspector was under an obligation to report the fact of the seizure to a Magistrate, whereupon the provisions of Sections 457 and 458 of the Code of Criminal Procedure shall apply to the custody and disposal of such seeds. This was admittedly not done by the Seed Inspector. The established procedure has been flouted, therefore, any conviction based on such prosecution evidence is unsustainable.

F Admittedly, appellant no. 1, the proprietor of the shop, was not there when the inspection was carried out. The Seed Inspector ought not to have carried out the inspection in the absence of appellant no.1.

G It was also submitted that the respondents have failed to show any evidence that the appellants had ever sold seeds in the market. No purchaser of the seeds was produced. This fact also seriously affects the credibility of the entire prosecution version. It was submitted that appellant no. 2 was not an agent of appellant no. 1, as stated by the prosecution witnesses. Appellant no. 2 was in fact an uneducated daily wage earner of about 17 years of age. He did not know the implication and seriousness of the signature appended by him on the inspection report. The appellants submitted that it was the first case registered in the State of Tamil Nadu for violation under the Seeds (Control) Order, 1983 and the sentence imposed by the courts below is disproportionate, excessive and harsh.

The appellants submitted that, including the period of remission, they had undergone imprisonment of about one month. According to them, the ends of justice would be met if their sentence is reduced to the period already undergone. A

The learned counsel appearing for the State fairly submitted that the State will have no objection in case while maintaining the conviction, the sentence of the appellants is reduced to the period already undergone. B

The learned counsel for the State submitted that this concession is made while keeping the following factors in view:

- (i) the appellant no.2 was a young boy of 17 years of age at the time of the commission of the offence; C
- (ii) a small quantity of seeds was seized; and
- (iii) this was the first case recorded in the State of Tamil Nadu for violation under the Seeds (Control) Order, 1983. D

In view of this submission of the learned counsel for the State, we do not deem it appropriate to adjudicate and give our findings on the various issues raised by the counsel for the parties.

We have carefully perused the entire evidence and documents on record and heard the learned counsel for the parties at length. On consideration of the totality of the facts and circumstances of this case, particularly in view of the statement made by the learned counsel for the State, in our considered view, the ends of justice would be met, if the sentence of the appellants is reduced to the period already undergone by them. The appellants were released by this Court during the pendency of these appeals and they are now not required to surrender. The fine as imposed by the trial court, if not already paid, would be paid within four weeks from the date of this judgment. E F

These appeals are partly allowed and disposed of accordingly.

B.B.B.

Appeals Partly allowed. G