Nagarmal Tekriwal vs State Of Bihar on 4 March, 1970

PETITIONER:
NAGARMAL TEKRIWAL

Vs.

RESPONDENT:
STATE OF BIHAR

DATE OF JUDGMENT:
04/03/1970

BENCH:

ACT:
Bihar Foodgrains Dealer's Licensing Order, 1966, Para, 3(2)-Presumption front storage of foodgrains when to be drawn-Exemption for agriculturists.
Evidence Act, 1872-Lease-deeds even if not registered can be used in criminal case for collateral purpose-Oral evidence not to be rejected on mere ground that it is of next-door neighbours.

HEADNOTE:
On search of the appellant's premises foodgrains above quantities permitted under the Bihar Foodgrain Dealer's Licensing Order 1966 were found. He was prosecuted under s. 7 of the Essential Commodities Act for violation of cl. 3 of the Order. The appellant produced oral and documentary evidence to show that he was an agriculturist and therefore the presumption tinder cl. 3(2) of the order that he had stored the foodgrains for sale could not be drawn against him. The documentary evidence aforesaid consisted of lease deeds executed by the appellant and his brother in favour of lessees. The oral evidence showed that he, and his brother were in possession of 80-90 bighas of land on which the foodgrains found in his possession were grown. The documentary evidence was rejected by the trial magistrate on the ground that the lease deeds not being registered were not admissible in evidence under s.. 49 of the Registration Act. The Sessions Judge in appeal did not 'rely on the lease-deeds for the reason that such documents could be brought into existence at any time. Both the trial magistrate and the Sessions Judge rejected the oral evidence as unreliable because it was given by persons who were next door neighbours and as such interested in the appellant.. The appellant's revision petition before the High Court was summarily rejected. By special leave he appealed to this

Court.
HELD : (i) Cl. 3(2) of the Order expressly excludes bona fide consumers and agriculturists from the presumption to be drawn from proof of storage only. It is obvious that the sub-clause speaks of storage for sale as a dealer although the words 'as a deal&' are not there because storage has reference to business as a dealer and that is the essence of the order. The fiction in the second sub-clause must be carried to its, logical conclusion. [902 B]
ii) No doubt the lease-deeds were not registered but in a criminal case it had to he seen whether they were genuine or not and whether, an inference of innocence could be based' on them They served the collateral purpose of showing that the lands about which the witnesses spoke orally were held by him for purposes of-cultivation. [902 D]
(iii) There is no reason why the evidence of a next door neighbour should be rejected unless there is something intrinsically wrong with it. [902 E-F]
(iv)The total circumstances in the case showed that the appellant was in fact carrying on agricultural operations. He executed a number of lease-deeds, produced receipts and proved by or a evidence that he
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was an agriculturist. In his case therefore the presumption under cl. 3(2) could not be drawn. If that presumption was not drawn, the case against him stood unproved because of the exemption which agriculturists enjoy. [902 F-G]
The appeal must accordingly be allowed.
Manipur Adminisration v. M. Nila Chandra Singh, [1964] 5 S.C.R.574. referred to and explained.

JUDGMENT:

CRIMINAL APPELLATE JURISDICTION: Criminal Appeal No. 40 of 1968.

Appeal by special leave from the judgment and order dated January 23, 1968 of the Patna High Court in Criminal Revision No. 91 of 1968.

D. P. Singh, D. N. Mishra and Govind Das, for the appel- lant.

R. C. Prasad, for the respondent.

The Judgment of the Court was delivered by Hidayatullah, C. J. On May 28, 1966, Bhola Prasad Mandal, Supply Inspector Pathargama with other officers searched a godown belonging to Nagarmal Tekriwal (appellant) and found stored therein 45 quintals of rice, 90 quintals of paddy, 5-50 quintals of grains, 3 quintals of wheat, one quintal Arhar and 207 quintals of Khesari together with weighing scale and weights and measures. As Nagarmal did not possess a licence under the Bihar Foodgrains Dealer's Licensing Order, 1966, he was prosecuted under s. 7 of the Essential-

Commodities Act for violation of cl. 3 of the order. He was convicted by the Munsif Magistrate, First Class and sentenced to undergo rigorous imprisonment for six months. The foodgrains found in his possession were also ordered to be forfeited to the State. He appealed unsuccessfully to the Sessions Judge, Santhal Parganas, Dumka and his revision in the High Court was summarily dismissed. He now appeals by special leave granted by this Court.

The defence of the appellant was that he was an agriculturist and that the foodgrains were grown by him on the lands he had taken on lease from various parties. In support of his defence, he produced both documentary and Oral evidence. The documentary evidence consisted of certain lease-deeds executed by 'him and his brother in favour of the lessors. Oral evidence showed that he and, his brother were in possession of 80-90 bighas of land on which Paddy and other foodgrains found in his pos-session, were grown, The case proceeded against him on the basis of the presump- tion under para 3 of the Order. It may be read here "Licensing of wholesale and retail dealers (1) No person shall carry on business as a whole-sale dealer or retail dealer except under and in accordance with the terms and conditions of a licence issued in this behalf by licensing authority.

(2) For the purpose of this clause, any person other than a bona fide consumer or an agriculturist, who stores any foodgrains in any quantity shall, unless the contrary is proved, be deemed to store the foodgrains for the purpose of sale."

It was held that as he had stored foodgrains above the permitted quantities for a wholesale dealer, he would be regarded as a wholesale dealer within the order. The defence, before us again is that he is an agriculturist and is not liable to the penalty under the law, because the presumption in his case cannot be drawn. It is also submitted that his case that he was an agriculturist stands completely proved in this case.

The learned Magistrate rejected the documentary evidence on the ground that the lease-deeds were not registered and were not admissible in evidence under s. 49 of the Registration Act. The learned Sessions Judge did not accept this ground; at least he did not say anything about it. He held that such documents could be brought into existence at any time and were thus not reliable. Both the Magistrate and the Sessions Judge did not accept the evidence of the witnesses on the ground that they were interested in the appellant. Mr. B. P. Singh, in arguing the case has drawn our attention to a ruling of this Court in Manipur Administration v. M. Nila Chandra Singh(1) and contended that the appellant cannot be regarded as doing business as a dealer unless a series of transactions by him of sale were proved against him. The ruling does say that the words "carrying on the business" in the context of the Act postulate a course of conduct and continuity of transactions. Therulingmaynof-be applicable in certain circumstances, as for example where even a single transaction can be demonstrated to be in the course of business. Carrying on of business may be found in one instance or more, depending upon the circumstances of the case.

(1) [1964] 5 S.C.R. 574.

90 2 However, in the present matter we need not worry about the ,carrying on of business, because in our opinion, the appellant -has successfully proved that he is an agriculturist and the

presumption under paragraph 3(2) of the order cannot be drawn against him. That paragraph expressly excludes bona-fide consumers and agriculturists from the presumption to be drawn from proof of storage only. It is obvious that sub-paragraph speaks of storage for sale as a dealer although the words "as a dealer" are not there, because storage has reference to 'business as a dealer and that is the essence of the Order. The fiction in the second sub-paragraph must be carried to its logical conclusion. In the -present case, the appellant produced a number of lease- deeds in which leases of various parcels of land are shows to have been granted to him. He also produced receipts of payment of lease money and he cited witnesses who deposed on oath that he and his brother cultivated 80-90 bighas of land. No doubt, the lease deeds are not registered, but for the purpose of a criminal prosecution, we have to see whether they are genuine or not and Whether an inference of innocence can be based upon them. In -our judgment they serve the collateral purpose of showing that the lands about which the witnesses spoke orally were held by him for purposes of cultivation. If that be so, then, he is an agriculturist and it is easy to see that the evidence which was 'brought for-ward of witnesses deposing orally was not concocted to set up a false defence. Indeed no adequate reasons were given for rejecting the testimony of witnesses. The learned Magistrate rejected the testimony of one witness on the ground that he is the next door neighbour and has a "soft corner for him". We do not know why the evidence of the next door neighbour should be rejected; it can only be rejected if there is something intrinsically wrong with that evidence. The total circumstances in the case show that the appellant was in fact carrying on agricultural ,operations. He executed a number of lease-deeds, produced receipts and proved by oral evidence that he was an-agriculturist. In his case, therefore, the presumption under para 3(2) could ,not be drawn. If that presumption is not drawn, then the case against him stands unproved because of the exemption which agriculturists enjoy.

On the whole, we are satisfied that his conviction was im- properly reached. We allow the appeal and set aside his conviction. His bail bonds are cancelled. The order of forfeiture of foodgrains is also set aside. We are informed that the foodgrains were sold. If any money has been recovered by sale of the foodgrains, it shall be handed over to the appellant.

Appeal allowed.

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