

Samir Kumar Das vs State Of West Bengal on 25 January, 1988

Equivalent citations: JT1988(2)SC78, 1989SUPP(1)SCC23, AIRONLINE 1988 SC 89, 1989 SCC (SUPP) 1 23, (1988) 2 JT 78 (SC), 1989 SCC (CRI) 125

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Bench: A.P. Sen, L.M. Sharma

ORDER

A.P. Sen, J.

1. Leave granted. Heard learned Counsel for the parties.

2. It appears that during a raid carried out on 30.8.1986 by Arun Krishna Kundu, PW 4, Sub-Inspector of Police attached to the District Enforcement Branch, Hooghly, at the grocery shop of the appellant at Duplexpatty, Chandannagar on receiving information that the appellant was engaged in clandestine business of imported edible rapeseed oil, the appellant was found in possession of two sealed tins of 15 kg. each of such rapeseed oil bearing STC mark and they were seized under seizure memo (Exh.1) and placed in the zimma of his brother Prabir Kumar Das, PW 1. On a written complaint by PW 4 the appellant was prosecuted under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955 for contravention of paragraph 3(2) of the West Bengal Imported Vegetable Oils (Prohibition of Unauthorised Sale) Order, 1984 in the Court of the Judge, Special Court (E.C.Act) Hooghly. After a summary trial, the learned Special Judge found the fact of seizure proved inasmuch as the appellant had no licence to deal in such commodities and found him guilty and sentenced him to rigorous imprisonment for four months and to pay a fine of Rs. 1,000. On appeal, a Division Bench of the High Court dismissed the appeal in limine observing that it found no ground to interfere with that finding.

3. The only contentions advanced by Shri A.K. Ganguly, learned Counsel for the appellant are, firstly, that the High Court was not justified in dismissing the appeal summarily and secondly, there was not an iota of evidence that the Article seized was imported rapeseed oil and therefore the conviction of the appellant under Section 7(1)(a)(ii) for violation of paragraph 3(2) of the Order cannot be sustained. As to the first, this Court has on occasions more than one deprecated the practice of the High Court of dismissing appeals against conviction on a criminal charge without a reasoned judgment, but we do not think that any useful purpose would be served in remitting the appeal to the High Court for a decision afresh in view of the fact that the appellant is a small grocery dealer. As to the second, it is true that Subodh Chakravarty, PW 5, Sub-inspector of Police attached to the District Enforcement Branch, Hooghly, who carried on investigation on the report of PW 4, admits that he did not send samples from the two seized tins to the chemical examiner for testing

whether they contained edible rapeseed oil. But that would not necessarily render the conviction of the appellant bad in law. The learned Special Judge has found it proved that the two seized tins bore STC mark with the label 'Edible Grade' packed by Pallawy Refinery, Maddhamgram. Therefore, the commodity in question was 'imported vegetable oil' within the meaning of paragraph 2(d) read with the explanation thereto of the Order. We accordingly maintain the conviction of the appellant under Section 7(1)(a)(ii) of the Act for contravention of paragraph 3(2) of the Order.

4. In the facts and circumstances of the case, we heard the learned Counsel on the question of sentence. Looking to the fact that the appellant is a petty grocery shopkeeper, we reduce the period of sentence to the period already undergone, but enhance the sentence of fine from Rs. 1,000 to Rs. 2,000, or in default to suffer rigorous imprisonment for a period of 15 days.

5. Subject to this modification in sentence, the appeal fails and is dismissed.