

Madras High Court

E.I.D. Parry (India) Ltd. vs Agricultural Officer (Quality ... on 10 November, 1988

Equivalent citations: 1989 (42) ELT 218 Mad

Author: D Annoussamy

Bench: D Annoussamy

JUDGMENT David Annoussamy, J.

1. These petitions coming on for hearing upon perusing these petitions, and the Affidavit filed with Crl. M.P. No. 2365 of 1988 on the file of the High Court, and upon hearing the arguments of Mr. C.A. Sundaram, Advocate for the petitioners in each of the petitions, and of Mr. T. Munirathina Naidu for Public Prosecutor, on behalf of the Respondent in both the petitions, the Court made the following order :-

These are two petitions under Section 482 of the Code of Criminal Procedure. Criminal Miscellaneous Petition No. 2365 of 1988 is by accused 1 to 3, 5 to 9 and 11. Criminal Miscellaneous Petition No. 2851 of 1988 is by accused 4 and 10. The 12th accused has not filed any petition. The substance of the complaint was that there was a violation by accused 1, the company, and by the other accused, who belong to the company in their various capacities, of Clause 13(1) of the Fertilizer Control Act, 1957 and that thereby they become punishable under Section 7(1)(a)(ii) of the Essential Commodities Act, 1955. The complainant also prayed that in accordance with the judgment of this Court reported in Mounaguruswamy v. Agrl. Officer (Inputs) 1985 MLJ (Crl.) 154 the concerned Magistrate to commit the accused to the Essential Commodities Act Court. The Magistrate has issued summons to all the accused to appear before him to answer the charge. Aggrieved by that proceeding of the Magistrate, eleven out of the twelve accused have preferred these two petitions, praying this Court to quash the case on the file of the Judicial First Class Magistrate, Dharapuram (P.R.C. No. 6 of 1988).

2. The learned Counsel for the petitioners submitted that as far as the company, the first accused was concerned, the complaint was preferred only on 30-3-1988, after more than three years from the date of the alleged sample was taken, that this inordinate delay was not explained in the complaint and that such a delay would deprive it from effectively setting out its case and meeting the charge. As far as the other petitioners accused are concerned, in addition to the above plea, the learned Counsel would state that as per Section 10 of the Essential Commodities Act only the persons, who were in charge of or were responsible to the company for the conduct of the business of the company shall be guilty of the contravention, and not the others, and that the complainant has not even alleged that the other accused were in any manner in charge of or responsible to the company for the conduct of the business. Further, the learned Counsel for the petitioners stated that the Act of issuing summons in a case of this nature was a very important one since it affected the reputation of the persons concerned and also would cause much inconvenience, if they happened to be simply discharged after hearing them, since they reside at places far away from the Court.

3. It is submitted now by the learned Counsel appearing for the Public Prosecutor that the judgment reported in Mounaguruswamy v. Agrl. Officer (Inputs) is no longer good law, that it is not necessary to present the complaint under the Essential Commodities Act to the territorial Judicial Magistrate

and that the complaint should be presented directly to the Essential Commodities Act Court. He relied for this purpose on the judgment of this Court rendered in C.A. No. 179 of 1984 on 23-9-1988. That decision itself is based on the decision of the Supreme Court in A.R. Antulay v. R.S. Nayak . The position regarding committal is being now settled, the complaint can no longer be entertained by the Magistrate for any purpose, and therefore the summonses which he had issued have necessarily to be quashed and the complaint be sent to the concerned Court under the Essential Commodities Act.

4. The learned Counsel for the petitioners is right in contending that the issue of process is not a mechanical operation, that it should be the result of application of mind, that the Court has to satisfy himself that there is sufficient ground for proceeding against each one of the accused. Therefore the Court will have to peruse the complaint and the relevant provisions of law and issue process only if he finds that such a measure is warranted.

5. Another apprehension expressed by the learned Counsel for the petitioners is that the proceeding being a summary in nature, there will be a risk for the accused of being tried on the very day of their appearance without framing charge etc. It is true that as per Section 251 of the Code of Criminal Procedure, it is not necessary to frame a formal charge; what the section requires is that the substance of the charge should be perfectly clear in the mind of the Court and made clear to the minds of the accused persons. In matters like the present ones, where there is a provision for minimum imprisonment and possibility of imposition of a sentence of imprisonment for a term upto two years, it is always desirable to frame a formal charge.

6. At any rate, the first duty of the Special Court would be to ascertain whether there is sufficient ground for proceeding as required under Section 204, Cr.P.C. With the above direction, the complaint is forwarded to the Special Court constituted under the Essential Commodities Act, Coimbatore, and that Special Court shall deal with the matter de novo. All the records received from the Magistrate shall also be forwarded to that Court and the Magistrate shall be informed of that operation.

3. In the result, both the petitions are allowed only to the extent that the summons issued by the Judicial First Class Magistrate of Dharapuram are quashed.