

IN THE COURT OF ADDITIONAL CHIEF JUDICIAL MAGISTRATE, NALBARI

CR. Case No. 13/2018

**u/s 29(1) of the Assam Shops and Establishments
Act, 1971**

State of Assam

-Vs-

Sri Jibeswar Sarma.....Accused person

PRESENT: Smti Sorbani Bhattacharjee, AJS

Additional Chief Judicial Magistrate, Nalbari.

ADVOCATES APPEARED:

For the state : Mr. Sonabar Ali, Ld. A.P.P,

For the accused : Sri Dipjyoti Saloi, Smti Banasri Bujarbaruah
Ld. Advocates,

Dates of evidence : 27.11.2019

Date of argument : 04.02.2020, 13.02.2020.

Date of judgment :13.02.2020

J U D G M E N T

1) The prosecution case, in brief, is that the accused is the proprietor/owner of M/S Sarma Mobile Centre, Nalbari and thereby an employer and shopkeeper/owner of Establishment of Commercial Establishment within the meaning of sub-section (7) and sub-section (19) of section 2 of the Assam Shops and Establishments Act, 1971 (hereinafter referred to as "the A.S.E. Act"). Under section 36(1) of

the A.S.E. Act, as amended up-to-date, and Rule 49 of the Assam Shops and Establishments Rules, 1976 (hereinafter referred to as "the A.S.E. Rules"), the accused is required to register his establishment/shop and thereafter renew the same in every calendar year. On 06.03.2018, Smti Plabita Bordoloi, Labour Inspector and Inspector under the A.S.E. Act, Nalbari, called upon the accused for registration of his establishment/shop by issuing a letter but the accused did not respond. Accordingly, Smti Plabita Bordoloi has filed the complaint before Ld. Chief Judicial Magistrate, Nalbari against the accused for violation of section 36(1) and Rule 45 for which the accused is punishable under section 29(1) of the said Act.

2) On receipt of summons from this Court, the accused Sri Jibeswar Sarma (hereinafter referred to as "the accused") appeared before this Court. A copy of the complaint (offence report) was furnished to him. The particulars of offence u/s 29(1) of the Assam Shops and Establishment Act, 1971, was read over and explained to the accused to which he pleaded not guilty and claimed to face trial.

3) The prosecution, in order to prove its case, examined one witness, namely:- Smti Plabita Bordoloi as PW-1.

4) After the closure of prosecution evidence, the accused was examined u/s 313 of the Cr.P.C. wherein he admitted that in the year 2018 he newly opened a mobile store and did not obtain the required license. After receiving notice, he went to the concerned office after one month and the concerned officer told him that the license cannot be issued as the case has already been forwarded to the Court. He declined to adduce any evidence in his defence. Heard the argument from both the sides.

5) **Point for Determination:-**

The point which is required to be determined for a just decision in the case at hand is as follows:

(i) Whether the accused contravened Section 36(1) of the Assam Shops and Establishment Act, 1971 and Rule-45 of the A.S.E. Rules, and thereby committed an offence punishable under section 29(1) of the A.S.E. Act ?

Discussion, decision and reasons therefor:-

6. Before I discuss the evidence tendered on record in the case at hand, let me have a glance at Section 36(1) of the A.S.E. Act and Rule 45 of the A.S.E. Rule, the contravention of which has been alleged.

7. Section 36 of the A.S.E. Act deals with **Registration of establishment**. Section 36(1) provides that every employer shall have his establishment registered under this Act. The registration shall be valid for a calendar year and thereafter shall be renewed for every calendar year.

8. Rule 45 of the A.S.E. Rules, which deals with **Registration of establishment and application for registration**, provides as follows:

“Within thirty days from the date of enforcement of these rules in case

of an establishment existing on that day and within thirty days from the date of commencement of the business in the case of a new establishment, the employer of every establishment shall apply for registration under the Act to the Chief Inspector or the officer authorised by him in this behalf in Form ‘O’ prescribed for the purpose in duplicate and in print together with the original copy of the treasury challan depositing the requisite amount of fees specified in Schedule-I...”

9. Having taken stock of the above provisions let me now proceed to discuss the evidence tendered on record.

10. PW-1 Plabita Bordoloi deposed that she filed this case against Jibeswar Sarma. Jibeswar Sarma has one shop at L.N.B road, Nalbari by the name Sarma Mobile Store. Jibeswar Sarma did not have any license under Assam Shops and Establishment Act, 1971. On 06/03/2018 one notice was issued to Jibeswar Sarma to obtain the required licence within 7 days, but he failed to obtain the license. On 02/08/2018 she filed complaint against Jibeswar Sarma. Exhibit 1 is the complaint and Exhibit 1(1) is her signature. Exhibit 2 is the notice issued to Jibeswar Sarma and Exhibit 2(1) is her signature.

PW-1 during her cross-examination admitted that it is not stated clearly in her complaint petition as to whether the accused failed to obtain license of his shop or failed to renew the license. She has not submitted any documents to show that she inspected the shop of Jibeswar Sarma. She has not mentioned the date in her complaint on which she inspected the shop of Jibeswar Sarma. She has not mentioned in her complaint as to who served the notice upon Jibeswar Sarma. She has not mentioned the date in her complaint on which the accused person received the notice. She does not remember the name of the peon who served the notice upon Jibeswar Sarma. She does not know whether Exhibit-2 notice bears the signature of Jibeswar Sarma. She does not know the date when Jibeswar Sarma established his shop. She denied the suggestion that Jibeswar Sarma was not running the shop and she filed a false case against Jibeswar Sarma. She denied the suggestion that this case was filed illegally while the process of registration of shop was under consideration.

11. From the evidence on record, it appears that PW-1 has nicely deposed about all the relevant facts leading to the institution of the instant case. She has deposed about the issuance of notice to the

accused to get the registration within 7(seven) days, and about the non-responding by the accused. It has also come in the evidence on record that the registration of the shop was not done as per the Rule which is even admitted by the accused in his statement recorded U/S 313 of CrPC. In his statement recorded U/S 313 of CrPC accused has admitted that in the year 2018 he newly opened a mobile store and did not obtain the required license. Furthermore, on perusal of Ext-2 (notice dated 06.03.2018) it is seen that it was received personally by the accused on the next day i.e. on 07.03.2018 but he failed to register his shop/ establishment within the period of 7 days as per the notice. From the evidence of PW-1 it is apparent that he did not respond to the notice. The evidence of PW-1 gets support from the admission of accused in his statement U/S 313 of CrPC wherein he has admitted that after receiving notice, he went to the concerned office after one month and the concerned officer told him that the license cannot be issued as the case has already been forwarded to the Court. The learned Counsel for the accused cross-examined PW-1 at length but could hardly impeach his credibility.

12. No matter, there is no mention in the complaint or in the evidence of PW-1 that on which date accused had opened his shop/ establishment. Fact remains that the accused himself has admitted that in his statement U/S 313 of CrPC that he did not obtain the required license for his newly opened mobile store. Needless it is to mention here that a complaint need not contain every detail of the alleged occurrence. It would suffice if it contains the gist of the alleged occurrence. The sole testimony of PW-1 is, in my considered opinion, wholly reliable and acceptable. Furthermore, PW-1 is the Labour Inspector and Inspector under the A.S.E. Act and hence an appropriate authority to depose in that connection. There is hardly any reason to disbelieve her with regard to the factum of registration of the shop/establishment of the accused. The defence could not make out any justifiable reason to disbelieve the evidence of a public officer. The defence failed to prove existence of any

enmity of PW-1 with the accused in order to satisfy this Court that PW-1 had falsely or with ulterior motive or for any previous grudge implicated the accused in this case. The accused has not adduced any documentary evidence in this case to prove that he had done registration of his mobile store as required under the Act and the rules there under.

13. In view of the above discussion, I am inclined to arrive at the conclusion that the accused has contravened the provisions contained in section 36(1) of the A.S.E. Act and Rule 45 of the A.S.E. Rules. The prosecution has been able to bring home the accusation u/s 29(1) of the A.S.E. Act against the accused beyond all reasonable doubt. Therefore, the accused is found guilty for commission of offence under section 29(1) of the A.S.E. Act.

ORDER

14. The accused is, accordingly, convicted under section 29(1) of the Assam Shops and Establishments Act, 1971. Considering the nature of offence, and taking note of the fact that contravention of the aforesaid provisions would lead to the flouting of the law and promote lawlessness, I am not at all inclined to extend the benefit under the Probation of Offenders Act to the accused convict.

15. Accused is heard on the point of sentence. He prayed for leniency saying that he will apply for the registration immediately and will renew it every year as per the Act. Taking into account, however, the aspect that this is the first offence on the part of the accused convict and that in his statement U/S 313 of CrPC he has himself admitted that he had not obtained the required license, I am inclined to deal with the accused convict a bit leniently while sentencing him in this case. The accused convict is, accordingly, sentenced under section 29(1) of the Assam Shops and

Establishments Act, 1971, to pay a fine of Rs. 1,000/- (rupees one thousand only) in default to undergo simple imprisonment for 3 months.

16. Furnish a free copy of this judgment to the accused/convict forthwith.

Given under my hand and the seal of this Court on this the 13th day February, 2020

Smti Sorbani Bhattacharjee, AJS

Addl. Chief Judicial Magistrate,

Nalbari

APPENDIX

Witness for the complainant side:

PW 1-Smti. Plabita Bordoloi (Complainant),

Exhibits of Complainant side:

Exhibit 1 – Complaint Petition,

Exhibit 1(1) – Signature of the complainant.

Exhibit 2:- notice

Exhibit 2(1) – Signature of the complainant

Defence witnesses :

Nil

Defence Exhibits :

Nil

Court Witnesses:-

NIL

Smti Sorbani Bhattacharjee, AJS

Addl. Chief Judicial Magistrate,

Nalbari