

(2006) 12 PAT CK 0083

In the Patna High Court

Case No : Criminal Miscellaneous No. 17863 of 2006

Anita Kumari

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 20-12-2006

Acts Referred:

Essential Commodities Act, 1955 — Section 10, 3, 7

Citation : (2007) 1 BLJR 817

Hon'ble Judges : Abhijit Sinha, J

Bench : Single Bench

Advocate : N.K. Agrawal, for the Appellant; J. Upadhaya, Assistant Public Prosecutor, for the Respondent

Final Decision : Allowed

Judgement

Abhijit Sinha, J.—Anita Kumari, the petitioner herein, is the proprietors of a Firm running in the name and design of "M/s Rajdhani Enterprises," which carries on business of distributorship of liquefied petroleum Gas bottled in iron cylinders (hereinafter to be referred to as "the L.P.G.") marketed by Indian Oil Corporation. She is aggrieved by order dated 29.11.2005 passed by the learned sub-Divisional Judicial Magistrate, Patna, in special case No. 1/98 (arising out of Sri S.K. Puri P.S. Case No. 180/97) whereby he has taken cognizance of the offence u/s 7 of the Essential Commodities Act, 1955 (hereinafter to be referred to as "the E.C. Act") against five persons including the petitioner and a prayer has been made for quashing of the entire criminal proceeding including the order dated 29.11.05.

2. It appears that the business premises of the Firm at Sri Krishna Puri and its Godown premises at Sheopuri was inspected at around 4 P.M. on 15.12.1997 by the Officers of the supply Department of the Government of Bihar who allegedly directed that under weight gas cylinders of Indian Oil Corporation were being supplied to the household consumers by the Firm and therefore, it had become necessary to weight the cylinders. However, as darkness had set in they sealed

both the premises. It is said that on the following day at around 10.30 A.M. the inspection party again arrived to make weighment of the gas cylinder when the Manager Ravi Kumar came and informed that on 15.12.1997 by Truck bearing Registration No. WB 25-4364 300 cylinders of LPG had arrived from the bottling plant at Balasore, Orissa and another 300 cylinders of LPG had arrived by Truck bearing Registration No. BR-13 G/8661 from the Indian Oil Corporation Bottling Plant at Jamshedpur and whereas the cylinders carried by a truck No. 4364 had been stored in the godown the other cylinders were available in the Truck standing outside. It is further said that since the process of weighing the cylinders could not be completed on that day it was resumed on 17.12.1997 and in course thereof 65 cylinders were weighed out of which 35 cylinders were found to contain less than the fixed quantity of 14.2 Kg. gas. It was, therefore, felt that the said Firm was supplying under weight gas cylinder to its householder consumers and accordingly a case u/s 7 of the Essential Commodities Act was instituted for violation of Bihar Trade Articles (Licences Unification) Order, 1984 and Liquefied Petroleum Gas (Regulations Supply and Distribution) Order, 1993.

3. It has been submitted on behalf of the petitioner that contravention of the Licences Unification Order would not apply in this case as in several decisions it has been held that the Unification Order in Bihar is not workable and as such the accused cannot be prosecuted for violation of its provision.

4. So far as the contravention of the Liquified Petroleum Gas (Regulations, Supply and Distribution) Order, 1993 is concerned it was sought to be submitted with reference to Clause 5 thereof that the Cylinders were filled up at the bottling plant of Indian Oil Corporation and the petitioner had no hand in it. Moreover no complaint had been received from any of the houshold consumers complaining of under weight cylinders being supplied. On this term petitioner's counsel submitted that there is no allegation against the petitioner for making out an offence under the E.C. Act as required u/s 10 thereof. Admittedly the offence of supplying under weight cylinders was committed without the knowledge of the petitioner and her prosecution is bad and illegal.

10: If the person contravening an order made u/s 3 is a company, every person who, at the time the contravention was committed, was in charge of, and was responsible to the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly.

Provided -- that nothing contained in this sub-section will render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

Clause 5 of the Liquified Petroleum Gas (Regulation and Supply and Distribution) Order, 1993 reads as under:

Restriction on sale or distribution of lequified petroleum gas below the standard

weight- No Government Oil Company, distributor or parallel marketeer shall supply, sell or distribute to a consumer liquified petroleum gas in cylinders which contains less than the weight of lequified petroleum gas specified in the Schedule annexed to this order.

5. Admittedly, the liquified petroleum gas is bottled in a bottling plant of Indian Oil Corporation and they are carried by trucks to the distributors who distribute them amongst the household consumers. Apparently the distributor had no role to play so far as the bottling of the petroleum gas is concerned. Any shortage in weight would have to relate back to the bottling agency or the carrier. If the bottling agency is sending under weight gas cylinders the petitioner distributor cannot be fastened with the liability of supplying underweight cylinders. Whatever allegations have been made regarding the contravention of any of the provisions of E.G. Act that was not done within the knowledge and / or the presence of the petitioner. She is fully protected by the proviso u/s 10 of the E.C. Act. Accordingly her prosecution cannot be sustained in the eye of law.

6. Accordingly, I am of the opinion that the continuation of the criminal proceeding would amount to an abuse of the process of the court. Hence, the application succeeds and the criminal proceeding being Special Case No. 1 of 1998 arising out of S.K. Puri P.S. Case No. 180 of 1997 pending in the court of the learned Sub Divisional Judicial Magistrate, Patna is hereby quashed, to the extend the petitioners is concerned.