
(2008) 07 JH CK 0123
In the Jharkhand High Court

Baleshwar Pandey

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 22-07-2008

Acts Referred:

Criminal Procedure Code, 1973 (CrPC) — Section 482
Essential Commodities Act, 1955 — Section 3, 7

Citation : (2008) 4 JCR 125

Hon'ble Judges : Amareshwar Sahay, J

Bench : Single Bench

Judgement

Amareshwar Sahay, J.—Heard the counsel for the parties.

2. The petitioner has filed this application challenging the order taking cognizance dated 29.11.2004, whereby the S.D.J.M., Garhwa, took cognizance of the offences u/s 7 of the Essential Commodities Act against the petitioner.

3. The facts in short are that the petitioner was holding a fair price shop being license No. 2 of 1984 and the shop was raided in which wheat and rice was found excess in his stock. According to stock register. 34 Quintals 41 Kgs. 680 grams wheat should have been there but on physical verification, the quantity of wheat was found to be 76 quintals and 50 kgs. Similarly, as per the stock register, 27 quintals 27 kgs of rice should have been there but on physical verification, the quantity of rice was found to be 49 quintals. Consequently, an FIR was lodged against the petitioner and, thereafter, on completion of the investigation, charge-sheet was submitted and on the basis of charge-sheet, cognizance was taken for the aforesaid offence against the petitioner.

4. Mr. Jal Prakash, learned senior counsel appearing for the petitioner submitted that the order taking cognizance dated 29.11.2004 is bad in law in view of the fact that neither the FIR nor in the charge-sheet nor in the order taking cognizance it is disclosed as to which particular Control Order issued u/s 3 of the Essential Commodities Act has been violated/contravened and therefore, the whole criminal prosecution against the petitioner including the order taking

cognizance is liable to be quashed on the ground of vagueness.

5. In support of such submission he has relied on a decision of the Supreme Court in the case of Prakash Babu Raghuvanshi Vs. State of Madhya Pradesh, " as well as the order passed by this Court in the case "Allaud-din Siddique and Anr. v. The State of Jharkhand" in Cr MP No. 1049 of 2004 and the order dated 31.3.2006 of this Court passed in the case of "Krishna Lai Agrawal and Anr. v. The State of Jharkhand and another" in Cr MP No. 1 of 2006.

6. Admittedly, the petitioner is running a Fair Price Shop under Public Distribution System and such Fair Price Shops are governed under Public Distribution System (Control) Order, 2001, which is a Central Act. Under the Public Distribution System (Control) Order, 2001, the fair price shops are the shops which are granted license to distribute essential commodities by an order issued u/s 3 of the Act to the ration card holders under Public Distribution System.

7. A person holding a fair price shop is therefore, definitely comes under the purview of Public Distribution System (Control) Order, 2001, who knows very well that he has to run the Fair Price Shop under the Provisions of Public Distribution System (Control) Order and any violation or contravention of the provisions of this Control Order would entail him for an action under the said Public Distribution System (Control) Order, 2001.

8. The Judgments cited by the learned senior counsel for the petitioner mentioned above, are the cases in which the licensees were the general traders and not the Fair Prince Shop dealers. Under the Bihar Trade Articles License and Unification Order. 1984, action can be taken against a dealer or licensee for violation of any of the Control Orders issued u/s 3 of the Essential Commodities Act. The case of a general food grain dealer doing business covered under the Bihar Trade Articles License and Unification Order, 1984 cannot be equated with the case in which a person is running a Fair Price Shop under Public Distribution System (Control) Order and, therefore, the requirement to mention the name of the Control Order either in the FIR or in the charge-sheet or in the order taking cognizance issued u/s 3 of the Essential Commodities Act, is not required because a licensee fully knows that he is doing business under the Public Distribution System (Control) Order and he can be proceeded for violation of the provisions of Public Distribution System (Control) Order and therefore, there is no vagueness at all. 9. In a recent case the Supreme Court in the case of "Hamida v. Rashid @ Raaheed and Ors. reported in (2008) 1 SCC 474" has held that inherent powers u/s 482, CrPC should be exercised only in rare case that too in order to correct the patent illegality or when some miscarriage of justice has been done. The present case does not come under any of the category mentioned In the said judgment of the Supreme Court.

In this view of the matter, in my view, no case at all is made out for any interference by this Court. Accordingly, having found no merit, this application is dismissed.