
(1995) 09 PAT CK 0017

In the Patna High Court

Case No : Criminal Miscellaneous No. 2328 of 1995 (R)

Chunilal Agrawal and Santosh Kumar Agrawal

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 18-09-1995

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (1996) 1 PLJR 361

Hon'ble Judges : D.S. Dhaliwal, J

Bench : Single Bench

Advocate : P.D. Agrawal, for the Appellant; I.N. Gupta, for the Respondent

Final Decision : Allowed

Judgement

D.S. Dhaliwal, J.—Chunilal Agrawal and Santosh Kumar Argawal, the Petitioners herein, pray for quashing of their criminal prosecution u/s 7 of the Essential Commodities Act (hereinafter referred to as the "Act") in Katras (Rajganj) P.S. case No. 122 of 1990 pending in the Court of Special Judge (E.C. Act), Dhanbad, including the order dated 14.2.1991 whereby the learned Special Judge took cognizance of the said offence.

2. The prosecution case, in brief, is that on 22.4.90 at about 8.45 A.M. on receipt of secret information Sub-Inspector, Anil Kumar of Katras (Rajganj) Out Post raided the godown of the Petitioners and found a truck being unloaded there. This led to seizure of rice weighing 93 quintals contained in 93 bags, Maize weighing 21 quintals contained in 24 bags, Gram weighing 8 quintals contained in 8 bags and one bag Masur Dal weighing 90 kgs from the truck/premises of the Petitioners. The Sub-Inspector sent a written report in this respect to Katras (Rajganj) Police Station as a result whereof case F.I.R. No. 122/90 was formally registered. After completion of the investigation police submitted chargesheet against the Petitioners, the truck owner and the driver for their having committed offence u/s 7 of the Essential Commodities Act for violation of the provisions of Clause 3 of Bihar Trade Articles (Licences Unification) Order, 1984

(hereinafter referred to as the Unification Order). Acting on the police report learned Special Judge took cognizance of the aforesaid offences against the Petitioner and their co-accused.

Hence this petition.

3. I have heard the learned Counsel for the Petitioners, A.P.P for the State and perused the records with their assistance.

4. The contention of the learned Counsel for the Petitioner is that for the storage of the food stuffs recovered, the Petitioners were not required to take any licence and as such they cannot be said to have violated the provision of Clause 3 of the Unification Order so as to make them liable for offence u/s 7 of the Act. Elaborating his point the learned Counsel submitted that storage limit in respect of rice, stood withdrawn by the State Government, on the date of recovery, vide notification No. G.S.R. 57. dated 10th November 1986. As regards Maize, counsel maintained that the storage limit had been fixed at 30 quintals and as such the recovery of 21 quintals of Maize from the Petitioners was well within the storage limit. Regarding the recovery of Gram and Masur Dal it has been submitted that since no licence fee for dealing in pulses had been fixed by the State Government the Unification Order was not workable in respect to the Trade Articles of Gram and Masur Dal. Learned A.P.P. for the State has fairly conceded to the aforesaid factual position.

5. The perusal of various notifications issued by the State Government go to show that storage limit of various Trade Article including wheat and rice was fixed by the State Government for the first time, on 17.10.1985, vide G.S.R. No. 49. However, later on vide G.S.R. No. 57 dated 10.11.1986 the restriction in respect to stock limit of wheat and rice was removed. Thus there was no storage limit in force in respect to rice on the alleged date of recovery. By now it is well settled by various decisions of this Court and also by the Apex Court that in order to proceed against the persons for violation of Unification Order fixation of storage limit of the Trade Articles is a sine qua non. Clause 2 of the G.S.R. No. 57 dated 10.11.1986 which fixes the storage limit in respect of the food grains reads as follows:

The retail dealer of food grains means a person who at a time holds stock of any quantity of food grains of one or all types taken together for purchase and sale other than personal consumption exceeding 30 (thirty) quintals but not exceeding 100 quintals.

The restriction on stock limit on wheat and rice is hereby removed. The stock of wheat and rice will not be taken into consideration along with other grains.

Since the restriction on stock of rice had been withdrawn, after excluding the recovery of rice the recovery of the other food grains i.e. Maize recovered from the premises of the Petitioners falls within the exempted limit of 30 quintals and as such the Petitioners were not required to take any licence for storage of the

recovered quantity of Maize. Admittedly no licence fee for obtaining licence for dealing in pulses had yet been prescribed by the State Government and in absence of the same the Unification Order, so far as it relates to pulses cannot be held as workable. A decision of the Division Bench of this Court given in Mahendra Prasad v. State of Bihar and Ors. (1993 ECC 586 Pat) can be referred to with advantage on this point. In this view of the matter, the Petitioners cannot be said to have committed any violation of Clause 3 of the Unification Order and as such their prosecution for offence u/s 7 of the E.C. Act cannot be sustained.

6. In the result the petition is allowed. The criminal prosecution of the Petitioners in the Court of Special Judge E.C. Act, Dhanbad, in Katras (Rajganj) P.S. Case No. 122 of 1990 and the impugned order taking cognizance against the Petitioners by the said court are hereby quashed.

7. Since the case of the two co-accused of the Petitioners, namely Buta Sahu and Ashok Srivastava, the driver and the owner of the truck stand on no different footing than that of the Petitioners the interest of justice calls for quashing their prosecution as well and I order accordingly.