(1983) 08 PAT CK 0034

In the Patna High Court

Case No : Criminal Miscellaneous No. 3570 of 1975.

Deo Saran Sao — APPELLANT

Vs

The State of Bihar — RESPONDENT

Date of Decision : 01-08-1983

Acts Referred:

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

Citation : (1983) PLJR 578

Hon'ble Judges : M.P. Varma, J

Bench : Single Bench

Advocate : N.K. Agrawal, for the Appellant; V.M.K. Sinha, for the Respondent

Final Decision : Dismissed

Judgement

M.P. Varma, J.—This is an application filed u/s 482 of the Code of Criminal Procedure for quashing the criminal charge for which the petitioner is being prosecuted. The offence complained of against the petitioner is with regard to violation of Bihar Paddy Procurement Order, 1973, commonly known as Leavy Order. This order came into force on 5.11.1973 and under clause 13 of the order the rate of procurement of the food-grains was fixed. Clause 13(1) of the order concerns the Millers and clause 13(2) applies to the wholesale dealers.The petitioner is a proprietor of a firm described as Kailash Sah Ram Lakhan Sah. The firm holds a licence for wholesale dealer having licence no. 222 of 1967. It may further be stated that clause 13(2) of the Order farther provides modes for payment of levy by the wholesale dealers. It is there that 50% of the total quantity of paddy and rice held in stock by the dealer on and from 15th November, 1973, till the order is enforced, is to be paid as levy to the State Government. Alternatively, the payment of the levy can be made under an agreement for the entire Kharif period and the minimum thereof will be 200 Quintals. The Kharif have also been defined therein under clause 2(1) in between 1.11.73 to 3.1.73 and the delivery is to be made at the procurement price fixed only under clause 2(H) of the Order. So far the case against the petitioner is concerned, it is stated that an agreement was executed by the petitioner to deliver 200 Quintals of rice and the same was to be paid in four instalments, each one of the instalments was of 50 Quintals and the payment was to be made on 15.1.1974 and the next instalment on 3l.1.1974 and again on 7.2.74 and the last instalment was to he paid on 28.2.74 According to the prosecution the petitioner delivered only 85 Qs. rice and thus defaulted in making payment of the total quantity as agreed upon and non-payment of thereof is an offence punsihable u/s 7 of the E.C. Act, as the levy Order, referred to above, was made u/s 3 of the Act.

2. On account of the omission made by the petitioner the Marketing Officer submitted a report stating the facts constituting the offence on the basis of which the court below took cognizance and the petitioner was thus summoned.

3. Mr. N.K. Agrawal, learned counsel appearing on behalf of the petitioner, has raised very short point for consideration, at the Bar. The learned counsel has submitted that the Bihar Paddy Procurement Order, 1973, has already been declared to be ultravires by a Bench of this Court in C.W.J.C. No. 167 of 1974 decided or, 30th September, 1974. It has been contended that in view of the levy-order being ultravires, for the facts alleged against the petitioner, no prosecution can lie for violation of orders made therein. It has been next contended that the petitioner entered into an agreement for payment of levy on 15th of November, 1973. It is stated that, in fact, there was no agreement finally executed, as the petitioner was never communicated of the acceptance of the offer, by the State Government. The contention is that in absence of the Government''s acceptance, the offer given by the petitioner, the agreement will not be deemed to be finally concluded, and in this view of the matter the petitioner cannot be made liable as he bears no obligation to pay the minimum quantity of 200 Qs. of rice. Counsel for the State, while counter-acting the points raised by the petitioner''s counsel has submitted that, so far the levy order is concerned, a Bench of this Court, while disposing of C.W.J.C. No. 167 of l974, struck down only part of the order and not the whole of it. It was held therein that the guide-line given for fixation of the procurement-price was since not adhered to the fixation of the procurement price was held to be ultravires and not whole of the order. The liability of the petitioner to pay the levy does not cease.

4. True it is that this Court in C.W.J.C. No. 167/74 has said that since the guideline, as given for fixation of the procurement-price was not followed, the procurement price was held to be ultravires. It is equally true that the agreement arrived at between the parties, referred to above, appears to be an unilateral one. This being a commercial-agreement, the acceptance of the same has to be communicated. In absence of the acceptance of the offer, the learned counsel, Shri. N.K. Agrawal rightly argued that the agreement was not finally concluded. It has also been contended that so far the levy of rice on the basis of the aforesaid agreement is concerned, the petitioner is not obliged to make

payments for the earlier 3 instalments i.e. for 15.1.1974, 31.1.1974 and 7.2.1974, as the order made on 21.2.1974 was declared to be invalid and procurement price was held to be illegal. In absence of any final agreement between the parties, it may be said that the petitioner was required to pay the levy at the rate of 50% of the total quantity of rice held in stock by him in between 15th November, 1973, till the date of passing the order. It is an admitted position that the petitioner has already paid rice upto 85 Qs. and in such a situation the last demand after 7.2.1974, being only 50 Qs., the requirement appears to have been well satisfied as the supply has exceeded the demand. There can, therefore, be no valid charge for the alleged violation of the levy-order. There is also much substance in the submissions of the learned counsel that since the procurement price having been held to be illegal, any demand of levy at that price, obviously becomes bad. The petitioner was not obliged to pay the levy under the Bihar Paddy Procurement Order, 1973, for which a demand was made on him. Prosecution for non-fulfilment of a demand of rice under the levy-order the procurement price of which has been declared invalid by this Court cannot reasonably be sustained and is fit to be quashed.In view of the above discussions, the application succeeds and the impugned order dated 1.9.75 is hereby set aside and the criminal prosecution against the petitioner is quashed.

