
(2001) 07 PAT CK 0123
In the Patna High Court
Case No : Criminal Appeal No. 116 of 1990

Dhrub Prasad and Narendra Prasad

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 26-07-2001

Acts Referred:

Citation : (2001) 07 PAT CK 0123

Judgement

B.N.P. Singh, J.—Appellants suffered conviction u/s 7 of the Essential Commodities Act, on being tried by Special Judge, Sitamarhi, in G.R. No. 6/86 Tr. No. 16/90 and were sentenced to suffer rigorous imprisonment for six months.

2. Facts of the case are that Rameshwar Singh Officer Incharge of Bairgania Police Station (P.W. 2), on receipt of confidential information about having storage of huge quantity of masoor in the houses of the Appellants for its smuggling to Nepal territory, laid a trap in their houses which situate in village Musachak at about 11.30 a.m. on 6.5.1986. Those who are shown to have accompanied Rameshwar Singh were Smt. Asha Sinha, Additional Superintendent of Police, Sitamarhi (not examined), Shri Navin Verma, erstwhile Sub-divisional Magistrate Sitamarhi (not examined) and B.N. Prasad, Executive Magistrate, Sitamarhi (P.W. 3). It was alleged that while from the house of Appellant Dhrub Prasad, there was seizure of 23 bags of masoor and 8 bags of masoor pulse, from the house of Appellant Narendra Prasad, there was seizure of 23 bags of masoor pulse and 6 bags of masoor. It was also alleged that four bags of masoor was found loaded on 4 bicycles weighing 80 kgs in each and while the alleged seizure was being effected, the Appellants failed to offer any satisfactory explanation for storage of food commodity found in their premises and with these accusations, a formal first information report was drawn up at Sitamami Police Station and investigation commenced, on conclusion of which Police laid charge sheet in the Court and the accused were put on trial. At trial, the prosecution examined altogether three witnesses. The defence too examined Ram Janak Sah (D.W. 1) and Munna Mahto (D.W.2).

3. The defence of the Appellants was that of innocence and they pleaded to have kept the commodity in question in their houses which were produced from their lands. The trial court on appreciation of evidence placed on record while disbelieving the contentions raised on behalf of the Appellants, found the Appellants guilty and sentenced them in the manner stated above.

4. Three-fold contentions were raised on behalf of the Appellants and it is sought to be urged by the learned Counsel for the Appellants that though the Appellants were prosecuted for violation of instructions contained in notification No. GSR 10, dated 241 h February, 1985, issued by the State of Bihar, in view of there being no evidence against the Appellants about movement of the commodity in question, with an object to smuggle them to Nepal territory, the prosecution of the Appellants on this score itself was unmerited. It was sought to be urged that even if there would have been some evidence about movement of commodity in question by the Appellants with an object to smuggle them to Nepal territory, that too would not construe the violation of the terms of notification in question and reliance on this score was sought to be placed on a decision of the Apex Court of the land in the case of Malkiat Singh Vs. The State of Punjab, where in observation made by the Apex Court is that even when there is merely preparation on the part of the accused to commit the offence, yet there would be a presumption that the accused might have changed their mind at any place and not have proceeded further in their journey and the last contention raised on behalf of the Appellants was that so far storage of masoor and masoor pulse in the premises of the Appellants was concerned, no licence was needed for dealing in pulses and reliance on this score was placed on a decision of this Court in the case of Satya Narain Prasad v. State of Bihar (1988 PLJR 502).

5. Now advertent to the evidences led by the prosecution, Md. Moinuddin Khan (P.W. 1) would state that on 6th of May, 1986, he too accompanied the Police Officer and S.D.M. while carrying out raid in the house of the Appellants when there was seizure of the commodity in question for which the Appellants did not hold valid licence. A confiscation proceeding was also initiated and the Appellants were apprehended. Evidence of Rameshwar Singh, Officer Incharge of Bairgania Police Station, who happens to be P.W. 2, was reiteration of the early version which he rendered to set the public authority in motion and it would beady. to repeat them. Evidence of Brahmdeo Narain Prasad, the erstwhile Executive Magistrate, Sitamari, P.W. 3 was similar narration as that of P.Ws. 1 and 2 about the raid having been earned out in the premises of the Appellants and eventual seizure of masoor and masoor pulse in the quantity as stated in the early version of the prosecution.

6. The thrust of the prosecution allegation was that storage of goods was made in the house of the Appellants ostensibly for their carriage to Nepal territory for which, admittedly, there was no evidence on record nor there was any evidence that it was in the premises for smuggling to Nepal territory. True it is that there is also restriction on movement of goods exceeding 15 kgs. in the adjoining

areas of the international territory, but as has been urged, there was no evidence worth the name that these goods were being stored in the premises of the Appellants on being carried out from a different destination. Even if there would have been some evidence about movement of goods that would not necessarily ipso facto raise a presumption that movement was for no other destination but to Nepal territory and in view of the observations made by the Apex Court of the land, such presumption could not have been raised. Lastly, even in view of the admitted position that there was storage of huge quantity of pulse and masoor in the houses of the Appellants, there was no restriction on storage nor any licence was required to deal with the business of these commodities. As was stated, some defence witnesses were examined at trial to persuade the Court to believe that the commodity in question was produced from the fields of the Appellants. Learned Counsel for the State would counter the arguments urged on behalf of the Appellants saying that even the trial court had discarded the case of the Appellants about the yield of such huge quantity from the meagre land held by the Appellants. But I fail to be persuaded with such logic as once there has been no evidence that these goods were stored in the premises for being carried out to other destinations so as to attract the violation of the notification in question, the Appellants cannot be found guilty on that score also.

7. Having given my anxious considerations to the contentions raised at Bar on behalf of the Appellants, I have no hesitation to hold that conviction of the Appellants and sentence imposed on them are not sustainable in law which are accordingly set aside. The Appellants are acquitted of the charges levelled against them and discharged from the liability of their bail bonds.