
(2002) 02 PAT CK 0008
In the Patna High Court
Case No : Criminal Appeal No. 35 of 1991

Feku Rai and Shri Rai

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 27-02-2002

Acts Referred:

Essential Commodities Act, 1955 — Section 7

Citation : (2002) 4 PLJR 778

Hon'ble Judges : B.N.P. Singh, J

Bench : Single Bench

Advocate : Madhuri Lata, Amicus Curiae, for the Appellant; B.P. Gupta, for the Respondent

Final Decision : Allowed

Judgement

B.N.P. Singh, J.—The Appellants alongwith one Akbar Ali were prosecuted u/s 7 of the Essential Commodities Act for transporting vegetable oil and other kind of edible oil from Nepal territory to the territory of India for sale in blackmarket to secure high price from the customers. The trial commenced against the Appellants and Akbar Ali, on behest of Dinesh Prasad, on accusation about apprehension of the Appellants with three tins being carried by them which were of Nepal origin. In the eventual trial, that commenced against them, five witnesses were examined including the seizure list witnesses, investigating officer and also the person on whose behest prosecution was launched against the Appellants and Akbar Ali. Though Suresh Prasad Chaudhary PW. 1 and Madan Chaudhary P.W. 3 who were signatories to the seizure list admitted their signatures on the seizure memo, did not claim seizure of incriminating objects from possession of the Appellants in their presence. Ram Balak Sah P.W. 2 turned volte face to the State. Though Dinesh Prasad P.W. 4 reiterated his early version rendered before the police about seizure of three tins containing oil, allegedly brought from Nepal territory, he admitted to have not served a copy of the seizure memo on the Appellants. If he is to be considered credible, a large

number of persons had flocked to the place of occurrence, but admittedly none of them was examined at trial. Even Jhapsi Raut, a Chaukidar, shown to be a witness to the apprehension of the Appellants with incriminating object was not examined at trial. This witness would state that it was disclosed to him by Appellant No. 1 that two tins were being carried by Akbar Ali who happened to be son of Shamsul Haque Mukhiya. Though incriminating objects al-legedly seized from possession of the appellants were said to be of Nepali origin, there has been no finding of the chemical examiner about their properties. Even though there was no good evidence about these incriminating objects being brought from Nepal, the trial Court rushed to erroneous conclusion that the incriminating objects in question, manufactured in Nepal territory, were brought to Madhuban Bazar for blackmarketing, and that apart, the learned Special Judge also seemed to be obsessed with the confessional statement of the Appellants recorded by the police, while recording verdict of guilt against them, which was bereft of probative value. It is admitted that the person by whom the incriminating objects were being carried, has been acquitted of the charges by the trial Court, and taking the prosecution case to be true on its face value, the Appellants were only the carrier. Even the contents of the tins being carried by Appellant No. 2 had not been disclosed in the statement of P.W. 4 which he rendered before the police and with the aid of the seizure memo it was inferred that the seized articles were of Nepali origin, notwithstanding local seal on the containers and on these premises, I find that the finding recorded by the trial Court was not sustainable in law which is, accordingly, set aside and the Appellants are acquitted of the charges levelled against them. They also stand discharged from the liability of the bail bonds. The appeal, accordingly, succeeds.

2. As Mrs. Madhuri Lata, Advocate has been appointed as amicus curiae by the Court to assist, she shall be paid her fees from the Patna High Court Legal Aid Committee.